

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE

- - - - -

Occidental Chemical) Judge Madeline
Corporation,) Cox Arleo
Plaintiff,)

vs.) Judge Leda
21st Century Fox America,) Dunn Wettre
Inc., et al.,)
Defendants.)

-----)
21st Century Fox America,) Case No.
Inc., et al.,) 2:18-cv-11273

Third-Party)
Plaintiffs,) ZOOM
vs.) VIDEOCONFERENCE

Passaic Valley Sewerage)
Commissioners, et al.,)
Third-Party)
Defendants.)

- - - - -

Videotaped Zoom 30(b)(6) Deposition of:

JOHN VOSICKY

Appearing Remotely from
Cuyahoga County, Ohio

September 27, 2022
9:12 a.m.

Location: Jones Day
901 Lakeside Avenue
Cleveland, Ohio

Reporter: Kristin Wegryn, RMR, CRR

<p>1 APPEARANCES:</p> <p>2 On behalf of Plaintiff</p> <p>3 Occidental Chemical Corporation:</p> <p>4 JOHN J. MCDERMOTT, ESQ.</p> <p>5 LAUREN KROHN, ESQ.</p> <p>6 MELISSA MALIK, ESQ. (Via Zoom)</p> <p>7 WILLIAM J. STACK, ESQ. (Via Zoom)</p> <p>8 Archer & Greiner, P.C.</p> <p>9 1025 Laurel Oak Road</p> <p>10 Vorhees, New Jersey 08043</p> <p>11 856.795.2121</p> <p>12 jmcdermott@archerlaw.com</p> <p>13 lkrohn@archerlaw.com</p> <p>14 mmalik@archerlaw.com</p> <p>15 wstack@archerlaw.com</p> <p>16 and</p> <p>17 LARRY SILVER, ESQ. (Via Zoom)</p> <p>18 Langsam Stevens Silver & Hollaender LLP</p> <p>19 1818 Market Street</p> <p>20 Suite 2430</p> <p>21 Philadelphia, Pennsylvania 19103</p> <p>22 215.239.9023</p> <p>23 lsilver@ssh-law.com</p> <p>24</p> <p>25 On behalf of witness John Vosicky:</p> <p>26 JOHN MCGAHREN, ESQ.</p> <p>27 DEBRA CARFORA, ESQ.</p> <p>28 Morgan, Lewis & Bockius LLP</p> <p>29 502 Carnegie Center</p> <p>30 Princeton, New Jersey 08540</p> <p>31 609.919.6600</p> <p>32 john.mcgahren@morganlewis.com</p> <p>33 debra.carfora@morganlewis.com</p> <p>34 On behalf of Small Parties Group:</p> <p>35 KEVIN OSANTOWSKI, ESQ.</p> <p>36 JEFFREY TALBERT, ESQ. (Via Zoom)</p> <p>37 SCOTT DELONG, ESQ. (Via Zoom)</p> <p>38 Preti, Flaherty, Beliveau and Pachios,</p> <p>39 Chartered, LLP</p> <p>40 One City Center</p> <p>41 Portland, Maine 04101</p> <p>42 207.791.3000</p> <p>43 kosantowski@preti.com</p> <p>44 jtalbert@preti.com</p> <p>45 sdelong@preti.com</p>	<p>Page 2</p> <p>1 APPEARANCES: (Continued)</p> <p>2 On behalf of RTC Properties:</p> <p>3 SAVIAN GRAY-SOMMERVILLE, ESQ. (Via Zoom)</p> <p>4 Van Ness Feldman, LLP</p> <p>5 1050 Thomas Jefferson Street NW</p> <p>6 Seventh Floor</p> <p>7 Washington, DC 20007</p> <p>8 202.298.1800</p> <p>9 sgray-sommerville@vnf.com</p> <p>10</p> <p>11 On behalf of Pharmacia:</p> <p>12 BRANDON MATSNEV, ESQ. (Via Zoom)</p> <p>13 Manko, Gold, Katcher & Fox, LLP</p> <p>14 401 City Avenue</p> <p>15 Suite 901</p> <p>16 Bala Cynwyd, Pennsylvania 19004</p> <p>17 484.430.2322</p> <p>18 bmatsnev@mankogold.com</p> <p>19</p> <p>20 On behalf of BASF Corporation:</p> <p>21 DAVID P. SCHNEIDER, ESQ. (Via Zoom)</p> <p>22 Bressler, Amery & Ross, PC</p> <p>23 325 Columbia Turnpike</p> <p>24 Florham Park, New Jersey 07932</p> <p>25 973.966.9671</p> <p>26 dschneider@bressler.com</p> <p>27 On behalf of MI Holdings, Tiffany and</p> <p>28 Hoffman La Roche:</p> <p>29 ADAM ARNOLD, ESQ. (Via Zoom)</p> <p>30 Gibbons PC</p> <p>31 One Gateway Center</p> <p>32 Newark, New Jersey 07102</p> <p>33 973.596.4519</p> <p>34 aarnold@gibbonslaw.com</p> <p>35</p> <p>36 On behalf of Royce Associates,</p> <p>37 a Limited Partnership:</p> <p>38 JACOB S. GROUSER, ESQ. (Via Zoom)</p> <p>39 Hoagland, Longo, Moran, Dunst & Doukas,</p> <p>40 LLP</p> <p>41 40 Paterson Street</p> <p>42 New Brunswick, New Jersey 08903</p> <p>43 732.545.4717</p> <p>44 jgrouser@hoaglandlongo.com</p> <p>45</p>
<p>1 APPEARANCES: (Continued)</p> <p>2 On behalf of CNA Holdings, LLC:</p> <p>3 JAMES O'TOOLE, JR., ESQ. (Via Zoom)</p> <p>4 Buchanan Ingersoll & Rooney PC</p> <p>5 Two Liberty Place - 50 South 16th Street</p> <p>6 Suite 3200</p> <p>7 Philadelphia, Pennsylvania 19102</p> <p>8 215.665.3857</p> <p>9 james.otoole@bipc.com</p> <p>10</p> <p>11 On behalf of the City of Newark:</p> <p>12 CRISTAL HOLMES-BOWE, ESQ. (Via Zoom)</p> <p>13 Michael A. Armstrong & Associates, LLC</p> <p>14 79 Mainbridge Lane</p> <p>15 Willingboro, New Jersey 08046</p> <p>16 609-877-5511</p> <p>17 chb@armstronglawfirm.com</p> <p>18 On behalf of SPG and Counsel for Individual</p> <p>19 Defendants Noka of America Corporation and</p> <p>20 Pharmacia LLC:</p> <p>21 MITCHELL F. ENGEL, ESQ.</p> <p>22 Shook, Hardy & Bacon, LLP</p> <p>23 2555 Grand Boulevard</p> <p>24 Kansas City, Missouri 64108</p> <p>25 816.559.2277</p> <p>26 mengel@shb.com</p> <p>27 On behalf of Passaic Valley Sewerage</p> <p>28 Commissioners and The Passaic Valley Sewerage</p> <p>29 Commission Liaison Group:</p> <p>30 GRANT P. GILEZAN, ESQ. (Via Zoom)</p> <p>31 Dykema Gossett, PLLC</p> <p>32 400 Renaissance Center</p> <p>33 Detroit, Michigan 48243</p> <p>34 313.568.6789</p> <p>35 ggilezan@dykema.com</p> <p>36 On behalf of PSE&G:</p> <p>37 EMILY SONG, ESQ. (Via Zoom)</p> <p>38 McGuire Woods, Esqs.</p> <p>39 Gateway Plaza</p> <p>40 800 East Canal Street</p> <p>41 Richmond, Virginia 23219</p> <p>42 804.775.4355</p> <p>43 esong@mcguirewoods.com</p> <p>44</p> <p>45</p>	<p>Page 3</p> <p>1 APPEARANCES: (Continued)</p> <p>2 On behalf of Garfield Molding Co., Inc.:</p> <p>3 KELLY J. WOY, ESQ. (Via Zoom)</p> <p>4 Ricci Tyrrell Johnson & Grey</p> <p>5 1515 Market Street</p> <p>6 Suite 1800</p> <p>7 Philadelphia, Pennsylvania 19102</p> <p>8 215.320.2089</p> <p>9 kwoy@rtjglaw.com</p> <p>10</p> <p>11 On behalf of Nokia of America Corporation:</p> <p>12 THOMAS E. MESEVAGE, ESQ. (Via Zoom)</p> <p>13 Lowenstein Sandler LLP</p> <p>14 One Lowenstein Drive</p> <p>15 Roseland, New Jersey 07068</p> <p>16 862.926.2698</p> <p>17 tmesevage@lowenstein.com</p> <p>18 On behalf of Mellon Leasing:</p> <p>19 JILL HORTON-MILLER, ESQ. (Via Zoom)</p> <p>20 Pearce Law LLC</p> <p>21 25 Main Street</p> <p>22 Hackensack, New Jersey 07601</p> <p>23 201.342.3400</p> <p>24 jhorton@pearcelaw1.com</p> <p>25 On behalf of EnPro Industries:</p> <p>26 JERRY K. RONECKER, ESQ. (Via Zoom)</p> <p>27 Husch Blackwell</p> <p>28 190 Carondelet Plaza</p> <p>29 Suite 600</p> <p>30 St. Louis, Missouri 63105</p> <p>31 314.480.1831</p> <p>32 jerry.ronecker@huschblackwell.com</p> <p>33</p> <p>34 ALSO PRESENT:</p> <p>35 Jason Perion, Sherwin-Williams</p> <p>36 Melissa Hunt, Occidental Chemical Corp.</p> <p>37 Joe Vandetta, Videographer</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p>

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25	MR. MCGAHREN.....	111	20				
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1	MR. MCGAHREN.....	112	21	1	VIDEOGRAPHER: We are now on the record.		
	MR. MCGAHREN.....	117	18	2	The date is September 27th, 2022. The time is		
2	MR. MCGAHREN.....	118	5	3	9:12 a.m. The caption of this case is		
	MR. MCGAHREN.....	118	17	4	Occidental -- Occidental Chemical Corporation		
3	MR. MCGAHREN.....	120	12	5	versus 21st Century Fox America, Incorporated,		
	MR. MCGAHREN.....	121	1	6	et al., versus Passaic Valley Sewage		
4	MR. MCGAHREN.....	124	12	7	Commissioners, et al. The name of the witness is		
	MR. MCGAHREN.....	124	22	8	John Vosicky.		
5	MR. MCGAHREN.....	125	10	9	Would the court reporter please swear in		
	MR. MCGAHREN.....	128	11	10	the witness.		
6	MR. MCGAHREN.....	129	11	11	JOHN VOSICKY, of lawful age, called for		
	MR. MCGAHREN.....	129	21	12	examination, being by me first duly sworn, as		
7	MR. MCGAHREN.....	129	25	13	hereinafter certified, deposed and said as		
	MR. MCGAHREN.....	130	16	14	follows:		
8	MR. MCGAHREN.....	132	3	15	EXAMINATION OF JOHN VOSICKY		
	MR. MCGAHREN.....	133	10	16	BY MR. MCDERMOTT:		
9	MR. MCGAHREN.....	134	24	17	Q. Good morning, sir.		
	MR. MCGAHREN.....	135	19	18	A. Good morning.		
10	MR. MCGAHREN.....	136	8	19	Q. I'm going to mark as Exhibit 1 the		
	MR. MCGAHREN.....	136	18	20	second amended notice of Rule 30(b)(6) deposition		
11	MR. MCGAHREN.....	137	12	21	of Sherwin-Williams.		
	MR. MCGAHREN.....	140	8	22	(S-W Exhibit 1, Second Amended Notice of		
12	MR. MCGAHREN.....	141	25	23	Rule 30(B)(6) Deposition of Defendant		
	MR. MCGAHREN.....	142	19	24	The Sherwin-Williams Company, was marked		
13	MR. MCGAHREN.....	143	4	25	for purposes of identification.)		
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18	MR. MCGAHREN.....	158	10				
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19	MR. MCGAHREN.....	158	25				
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20	MR. MCGAHREN.....	160	23				
	MR. MCGAHREN.....	161	7				
21	MR. MCGAHREN.....	162	7				
	MR. MCGAHREN.....	166	12				
22	MR. MCGAHREN.....	166	22				
	MR. MCGAHREN.....	168	8				
23	MR. MCGAHREN.....	168	18				
	MR. MCGAHREN.....	169	3				
24	MR. MCGAHREN.....	171	25				
	MR. MCGAHREN.....	173	7				
25	MR. MCGAHREN.....	175	18				

<p style="text-align: right;">Page 14</p> <p>1 Q. I'll hand that to you.</p> <p>2 Is it your understanding that you're</p> <p>3 here to testify today as the corporate designee</p> <p>4 of Sherwin-Williams?</p> <p>5 A. Yes.</p> <p>6 Q. And is it your understanding that your</p> <p>7 testimony here today is binding on the company?</p> <p>8 A. Yes.</p> <p>9 Q. And you understand that you're under</p> <p>10 oath?</p> <p>11 A. Yes.</p> <p>12 Q. I've marked as Exhibit 2 a document that</p> <p>13 is dated January 3rd, 1995. It has the Bates</p> <p>14 number MAXUS0833935.</p> <p>15 (S-W Exhibit 2, 1-3-95 Express Mail,</p> <p>16 Bates-labeled MAXUS0833935 - 3945, was</p> <p>17 marked for purposes of identification.)</p> <p>18 Q. If you could take a look at the</p> <p>19 document, Mr. Vosicky, that I've marked as</p> <p>20 Exhibit 2. Let me know if you've seen that</p> <p>21 before.</p> <p>22 A. Yes.</p> <p>23 Q. Am I correct that it is a Request For</p> <p>24 Information sent from EPA to Sherwin-Williams on</p> <p>25 or about January 3rd, 1995?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. If you could take a look at the document</p> <p>2 I marked as Exhibit 3, sir. Let me know if</p> <p>3 you've seen that one before.</p> <p>4 A. So I'm familiar with pages 1 through 5.</p> <p>5 Q. Okay. And the balance of the document</p> <p>6 after page 5 you've not seen before?</p> <p>7 A. I know it exists, but I've not -- I've</p> <p>8 not seen this in preparation for this deposition.</p> <p>9 Q. Okay. If you could just keep Exhibit 3</p> <p>10 nearby. And I'd like to direct your attention</p> <p>11 back to Exhibit 2, which is the January 3rd,</p> <p>12 1995, document.</p> <p>13 A. Okay.</p> <p>14 Q. If you look at the bottom of page 1,</p> <p>15 it -- am I correct that EPA included with this</p> <p>16 Request For Information two attachments, an</p> <p>17 Attachment A and an Attachment B?</p> <p>18 A. Is that in this exhibit?</p> <p>19 Q. Yes.</p> <p>20 A. Okay. Yes, that's correct.</p> <p>21 Q. And, according to the cover page, or the</p> <p>22 cover letter, I should say, EPA states that it is</p> <p>23 requiring Sherwin-Williams to provide the</p> <p>24 information requested in Attachment A.</p> <p>25 Is that -- is that correct?</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Yes.</p> <p>2 Q. When did you first see this document?</p> <p>3 A. Six weeks ago, plus or minus a week.</p> <p>4 Q. And if I could direct your attention to</p> <p>5 the -- about the middle of the first page.</p> <p>6 Is it correct that this document is</p> <p>7 requesting information from Sherwin-Williams</p> <p>8 regarding its plant at 60 Lister Avenue in</p> <p>9 Newark, New Jersey?</p> <p>10 A. Yes.</p> <p>11 Q. And, in 1995, that plant was still</p> <p>12 operating; is that right?</p> <p>13 A. From the records I've seen, that's</p> <p>14 correct.</p> <p>15 Q. And it's no longer operating today,</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. I'm going to mark as Exhibit 3 a letter</p> <p>19 on Sherwin-Williams' letterhead dated March 2nd,</p> <p>20 1995.</p> <p>21 (S-W Exhibit 3, 3-2-95 letter Re:</p> <p>22 Request for Information Regarding the</p> <p>23 Diamond Alkali Superfund Site,</p> <p>24 Bates-labeled MAXUS0840238 - 262, was</p> <p>25 marked for purposes of identification.)</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes.</p> <p>2 Q. And then in the next paragraph, it</p> <p>3 indicates that Attachment B sets forth certain</p> <p>4 instructions that EPA is directing</p> <p>5 Sherwin-Williams to follow in answering requests;</p> <p>6 is that right?</p> <p>7 A. Yes. Yes.</p> <p>8 Q. If you turn to the next page of Exhibit</p> <p>9 2. And the second paragraph from the bottom is</p> <p>10 what I'm going to direct your attention to.</p> <p>11 Am I correct that Sherwin-Williams</p> <p>12 advises -- I'm sorry. Let me start over.</p> <p>13 Is it correct that EPA advises</p> <p>14 Sherwin-Williams in this letter that it is under</p> <p>15 a continuing, continuing obligation to supplement</p> <p>16 its responses to these requests if information</p> <p>17 not known or not available to it as of the date</p> <p>18 of the submission of its response should later</p> <p>19 become known or available?</p> <p>20 Is that an accurate recitation of that</p> <p>21 portion of the instructions?</p> <p>22 A. Yes. That summarizes the first</p> <p>23 sentence.</p> <p>24 Q. And then in the next sentence, I'm</p> <p>25 correct that EPA continues to inform</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 Sherwin-Williams that if at any time in the</p> <p>2 future it obtains or becomes aware of additional</p> <p>3 information and/or finds that any portion of the</p> <p>4 submitted information is false, misleading or</p> <p>5 misrepresents the truth, it must promptly notify</p> <p>6 EPA?</p> <p>7 Is that an accurate recitation of that</p> <p>8 instruction?</p> <p>9 A. Yes.</p> <p>10 Q. And then in the last sentence in that</p> <p>11 paragraph, EPA informs Sherwin-Williams that if</p> <p>12 any part of its response is found to be untrue,</p> <p>13 it may be subject to criminal prosecution.</p> <p>14 Is that an accurate recitation of that</p> <p>15 part of the instruction?</p> <p>16 A. I've not read this. I'll read it for</p> <p>17 just a moment.</p> <p>18 Q. Okay.</p> <p>19 A. Can you repeat your question, please.</p> <p>20 Q. Sure.</p> <p>21 Is it correct that in this cover letter,</p> <p>22 EPA informs Sherwin-Williams that if any part of</p> <p>23 its response is found to be untrue, it may be</p> <p>24 subject to criminal prosecution?</p> <p>25 Is that an accurate recitation of that</p>	<p style="text-align: right;">Page 20</p> <p>1 submitted its Request For Information to</p> <p>2 Sherwin-Williams in 1995; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. If I could turn your attention to</p> <p>5 Attachment A of Exhibit 2. There's an underlined</p> <p>6 heading in the middle of the page at the top. It</p> <p>7 says: Request For Information.</p> <p>8 Is that what you're seeing?</p> <p>9 A. Yes.</p> <p>10 Q. There is a series of numbered requests</p> <p>11 below that heading.</p> <p>12 Do you see those?</p> <p>13 A. Yes.</p> <p>14 Q. And Number 3 -- Request Number 3 reads:</p> <p>15 Did your company receive, utilize, manufacture,</p> <p>16 discharge, release or dispose of any materials</p> <p>17 containing the following substances. And then it</p> <p>18 lists a number of substances after that.</p> <p>19 Do you see that part?</p> <p>20 A. Yes.</p> <p>21 Q. And if you look, the third substance</p> <p>22 down is DDT; is that right?</p> <p>23 A. That's correct.</p> <p>24 Q. Are you familiar with DDT?</p> <p>25 A. As it pertains to this case, yes.</p>
<p style="text-align: right;">Page 19</p> <p>1 portion of the letter?</p> <p>2 A. I don't see that specific language.</p> <p>3 Q. Well, can you read the last sentence to</p> <p>4 me of that paragraph.</p> <p>5 A. "Information covered by such a claim</p> <p>6 will be disclosed by EPA only to the extent and</p> <p>7 by means of procedures set forth in Title 40 CFR</p> <p>8 Part 2, Subpart B." I'm sorry. "If no such</p> <p>9 claim accompanies the information when it is</p> <p>10 received by EPA, it may be made available to the</p> <p>11 public by EPA without further notice to you."</p> <p>12 Q. I'm referring to a different paragraph.</p> <p>13 If you look at page 2 of the letter, sir. It has</p> <p>14 a "2" on the bottom.</p> <p>15 A. Yes.</p> <p>16 Q. And the second paragraph from the</p> <p>17 bottom -- the full paragraph at the bottom and</p> <p>18 then the paragraph right above, if you could read</p> <p>19 the instruction that's set forth in the last</p> <p>20 sentence of that paragraph, sir.</p> <p>21 A. Okay. "If any part of your response is</p> <p>22 found to be untrue, you may be subject to</p> <p>23 criminal prosecution."</p> <p>24 Q. And you agree that was part of the --</p> <p>25 again, that's part of the cover letter the EPA</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. So is it fair to say that EPA is</p> <p>2 instructing Sherwin-Williams in this Request For</p> <p>3 Information to identify whether its plant at 60</p> <p>4 Lister Avenue in Newark ever received, utilized,</p> <p>5 manufactured, discharged, released or disposed of</p> <p>6 DDT?</p> <p>7 A. I'm sorry. Can you repeat that one more</p> <p>8 time.</p> <p>9 Q. Sure.</p> <p>10 Is it fair to say that, in part, this</p> <p>11 Request For Information Number 3 from EPA is</p> <p>12 requesting Sherwin-Williams to inform EPA whether</p> <p>13 the plant at 60 Lister Avenue in Newark ever</p> <p>14 received, utilized, manufactured, discharged,</p> <p>15 released or disposed of DDT?</p> <p>16 MR. MCGAHREN: Objection to the form of</p> <p>17 the question.</p> <p>18 Q. You can answer.</p> <p>19 A. That's how I read the question.</p> <p>20 Q. Was DDT ever received, utilized,</p> <p>21 manufactured, discharged, released or disposed of</p> <p>22 at the Sherwin-Williams plant at 60 Lister Avenue</p> <p>23 in Newark?</p> <p>24 A. There are records as through part of the</p> <p>25 preparation that indicates there was DDT at the</p>

6 (Pages 18 - 21)

<p style="text-align: right;">Page 22</p> <p>1 property.</p> <p>2 Q. And when you say "there was DDT at the</p> <p>3 property," what do you mean by that?</p> <p>4 A. There were some usage and fill records</p> <p>5 that indicate it was present.</p> <p>6 Q. When did Sherwin-Williams begin</p> <p>7 operating the plant at 60 Lister Avenue in</p> <p>8 Newark?</p> <p>9 A. From the records I reviewed, in 1910 is</p> <p>10 the initial date.</p> <p>11 Q. And when did Sherwin-Williams shut the</p> <p>12 plant down?</p> <p>13 A. My understanding is 1999.</p> <p>14 Q. If I refer throughout the deposition to</p> <p>15 "the Newark plant," can we agree that that refers</p> <p>16 to the Sherwin-Williams plant at 60 Lister Avenue</p> <p>17 unless we're -- we specifically say otherwise?</p> <p>18 A. Yes.</p> <p>19 Q. So you indicated a moment ago that</p> <p>20 there -- you're aware of some usage of fill</p> <p>21 records that indicate that DDT was present at the</p> <p>22 site of the Newark plant; is that -- is that</p> <p>23 right?</p> <p>24 A. And, to clarify, the records indicate a</p> <p>25 product called Pestroy, which other records</p>	<p style="text-align: right;">Page 24</p> <p>1 "produced."</p> <p>2 Q. It's fair to say that the fill sheet</p> <p>3 would indicate a volume of Pestroy DDT at the</p> <p>4 site for some period of time?</p> <p>5 MR. MCGAHREN: Objection to the form of</p> <p>6 the question.</p> <p>7 A. This sheet indicated a single year's</p> <p>8 volume.</p> <p>9 Q. Okay. Other than that document, any</p> <p>10 other records that you've reviewed at any time</p> <p>11 referencing the presence of DDT at the Newark</p> <p>12 plant?</p> <p>13 A. There were other files with the word</p> <p>14 "DDT" on them, I believe a map, but no, nothing</p> <p>15 else. The fill sheet was really the, the one.</p> <p>16 And it wasn't DDT. It said "Pestroy."</p> <p>17 Q. And I think you testified a moment ago</p> <p>18 that it's your understanding, from your review of</p> <p>19 the records, that the Pestroy referenced on that</p> <p>20 fill sheet contained DDT as a constituent part?</p> <p>21 A. Based on what I know of Pestroy from the</p> <p>22 document review, it indicates DDT is an active</p> <p>23 ingredient.</p> <p>24 Q. When did you first see the usage and</p> <p>25 fill sheet indicating Pestroy?</p>
<p style="text-align: right;">Page 23</p> <p>1 indicate the constituent -- constituent within</p> <p>2 that was DDT.</p> <p>3 Q. When was Pestroy containing DDT present</p> <p>4 at the Newark plant as part of the</p> <p>5 Sherwin-Williams operations?</p> <p>6 A. Without the records in front of me, I</p> <p>7 don't know.</p> <p>8 Q. With respect to the -- to the usage and</p> <p>9 fill records that you just referred to that</p> <p>10 reference a product called Pestroy containing DDT</p> <p>11 being present at the plant, how many documents</p> <p>12 did you review that indicated that?</p> <p>13 A. The usage and fill record, I saw one</p> <p>14 document that indicated that.</p> <p>15 Q. When you say "usage and fill record,"</p> <p>16 can you just explain to me, as a general matter,</p> <p>17 what that -- what that is?</p> <p>18 A. Yeah. It appeared to be a -- just that,</p> <p>19 a fill sheet of annual volume.</p> <p>20 Q. A fill sheet of annual volume produced</p> <p>21 at the plant?</p> <p>22 MR. MCGAHREN: Object to the form of the</p> <p>23 question.</p> <p>24 Q. Okay.</p> <p>25 A. The word I saw was "fill," not</p>	<p style="text-align: right;">Page 25</p> <p>1 A. This week.</p> <p>2 Q. Sir, if I could direct your attention</p> <p>3 back to Exhibit 3, which is one of the documents</p> <p>4 that we looked at briefly a moment ago.</p> <p>5 And Exhibit 3 -- am I correct that</p> <p>6 Exhibit 3 is a March 2nd, 1995, letter from</p> <p>7 Sherwin-Williams to Patricia Hicks [sic] at EPA?</p> <p>8 A. Yes.</p> <p>9 Q. And the letter marked Exhibit 3 is</p> <p>10 responding to the Request For Information</p> <p>11 Sherwin-Williams received from EPA in January</p> <p>12 1995?</p> <p>13 A. Yes.</p> <p>14 Q. If you turn to page 5 of the document,</p> <p>15 sir, it's -- do you see the signatory of the</p> <p>16 document there? It says it was signed by</p> <p>17 Donald J. McConnell.</p> <p>18 A. Yes.</p> <p>19 Q. Are you familiar with who Donald J.</p> <p>20 McConnell is?</p> <p>21 A. I am.</p> <p>22 Q. Who is Donald McConnell?</p> <p>23 A. He was environmental counsel at the</p> <p>24 time.</p> <p>25 Q. The environmental counsel for</p>

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1 Sherwin-Williams?

2 A. That's correct.

3 Q. Is he still employed by the company?

4 A. He is not.

5 Q. When did he retire?

6 MR. MCGAHREN: Objection. Form of the

7 question. Lack of foundation.

8 Q. It's fair.

9 Is he retired?

10 A. He is retired.

11 Q. When did he retire?

12 A. I don't recall the date. Within the

13 last three to five years.

14 Q. If I could turn your attention, sir,

15 to -- on Exhibit 3, Sherwin-Williams' response to

16 Request Number 3 which is on the bottom of the

17 first page.

18 Do you see that?

19 A. I do.

20 Q. And am I correct that Sherwin-Williams'

21 response in this letter to EPA's Request Number 3

22 indicates, as it pertains to DDT, that no

23 information has been obtained that would indicate

24 that the Lister Avenue facility ever received,

25 utilized, manufactured, discharged, released or

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1 disposed of DDT?

2 A. Can you repeat that one more time.

3 Q. Sure.

4 Is it accurate to say that

5 Sherwin-Williams' response in this March 2nd,

6 1995, letter to EPA with respect to DDT states

7 that no information has been obtained that would

8 indicate that the Lister Avenue facility ever

9 received, utilized, manufactured, discharged,

10 released or disposed of DDT?

11 A. Yes.

12 Q. And testifying as the corporate

13 representative for -- let me start over.

14 As the corporate designee for

15 Sherwin-Williams, you agree that that answer's

16 not accurate, right?

17 A. At the time the answer was created, and

18 based on the information available, it was

19 accurate.

20 Q. In preparing for this deposition, did

21 you do anything to evaluate what information was

22 available, available at the time that this answer

23 was created?

24 MR. MCGAHREN: Object to the form of the

25 question.

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1 Q. You can answer.

2 A. I did not.

3 MR. MCGAHREN: I'm also going to object

4 that it's outside the scope of the subjects.

5 He's not testifying in a 30(b)(6) capacity to

6 that question.

7 MR. MCDERMOTT: I disagree. Topic -- it

8 relates to several topics: Topic 1, operation of

9 the Newark plant, including all operations that

10 use hazardous substances; Topic 2,

11 Sherwin-Williams' storage of hazardous substances

12 at the Newark plant; Topic 9, any communications

13 from Sherwin-Williams and any government agency

14 regarding Sherwin-Williams' actual asserted

15 liability to the United States.

16 MR. MCGAHREN: I maintain my objection.

17 MR. MCDERMOTT: Okay.

18 BY MR. MCDERMOTT:

19 Q. Based on the information that you

20 reviewed in preparation to testify as the

21 corporate designee of Sherwin-Williams, you would

22 agree that that portion of Sherwin-Williams'

23 response to Request Number 3 with respect to DDT

24 is not accurate, right?

25 A. When the -- when the response was

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1 produced, I believe the author felt that was

2 accurate; that there wasn't information to

3 indicate that there was DDT at the property.

4 Q. Based on the information that you know

5 today, that response is not accurate, right?

6 A. Based on records produced from this

7 case, new information would indicate there was

8 the presence of DDT.

9 Q. Now, you testified a moment ago that you

10 understood that Mr. McConnell, in responding to

11 this, believed that that portion of the response

12 to Request Number 3 relating to DDT was accurate

13 at the time; is that -- that's fair?

14 A. That's my understanding.

15 Q. Have you consulted or communicated with

16 Mr. McConnell in any way with respect to this

17 deposition or the Newark plant?

18 A. I've not.

19 Q. Have you requested anybody do so on your

20 behalf to help you prepare for the deposition?

21 A. No, I've not.

22 Q. Has Sherwin-Williams informed EPA --

23 I'll restart that one.

24 Has Sherwin-Williams supplemented its

25 response to this March 2nd, 1995 -- sorry. That

Page 30

1 was bad again.

2 Has Sherwin-Williams supplemented at any

3 time its March 2nd, 1995, response to EPA's

4 Request For Information that we've marked as

5 Exhibit 3?

6 MR. MCGAHREN: I'm going to object that

7 this is outside of the subjects, but you can

8 answer if you know.

9 A. So, as far as follow-up, I know that

10 there have been -- there's been full cooperation

11 since the initial RFI. What form is that in, I

12 don't know.

13 Q. With respect to the fact that DDT was

14 present at the Newark plant during

15 Sherwin-Williams' operation, has that fact been

16 communicated to the EPA?

17 A. My understanding is that through the

18 cooperation, that the agency is knowledgeable of

19 that. Again, the method of how that was

20 communicated I don't know.

21 Q. What do you base that, your

22 understanding that they -- that that -- let me

23 restart.

24 What do you base that understanding that

25 EPA has that knowledge on?

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1 A. Just through document review and the

2 preparation for the deposition.

3 Q. Have you seen any documents

4 communicating to EPA that DDT was present at the

5 Newark plant at any time as part of the

6 Sherwin-Williams operations?

7 A. That was communicated to the EPA?

8 Q. Yes.

9 A. The documents I have seen include DDT

10 and ground sampling surveys. So indirectly

11 indicates it was part of an investigation. And

12 my understanding is that some of that information

13 was provided to the agency.

14 Q. Do you know what specifically was

15 provided to the agency?

16 A. I don't.

17 Q. I'll mark as Exhibit 4 a document that

18 has the date August 26th, 1946. And it bears the

19 Bates number TSWC-FED-00093619.

20 (S-W Exhibit 4, Board of Operators

21 1415th meeting, Bates-labeled

22 TSWC-FED-00093619 - 3630, was marked for

23 purposes of identification.)

24 Q. If you could take a look at that

25 document that I've marked as Exhibit 4, sir. And

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1 let me know if you've seen that one before.

2 A. There's a lot of information. Just give

3 me a moment, please.

4 Q. Sure.

5 A. In honesty, I may have reviewed this

6 document. I don't recall if it was this exact

7 document or one similar.

8 Q. Am I correct that this document is a

9 board of operators -- a board of operators -- and

10 then a number that's illegible -- meeting dated

11 August 26th, 1946?

12 A. That's what that heading reads.

13 Q. And is it your understanding -- well,

14 let me -- let me ask this way:

15 If you look at around the middle of the

16 page, there's a paragraph that appears to start

17 with the heading Production Problems.

18 Do you see that paragraph, sir?

19 A. I see that initial -- yes, I do.

20 Q. And if you look at the last sentence of

21 that paragraph, it reads: Our Oakland and Newark

22 plants reported that their inventories were short

23 on DDT.

24 Did I read that correctly, sir?

25 A. That's how I read it.

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1 Q. And as the corporate designee of

2 Sherwin-Williams testifying today, do you agree

3 that that statement is indicating that the Newark

4 plant had an inventory of DDT, at least as of the

5 date of this document?

6 A. Yeah. For the date of this document,

7 that sentence indicates that there was some

8 inventory of DDT on hand.

9 Q. Does Sherwin-Williams have any

10 information to show that that statement is not

11 accurate?

12 A. Regarding that year and that statement,

13 I've not seen anything that would refute that.

14 Q. I'm going to mark as Exhibit 5 a

15 document -- actually, before I -- before I do

16 that, before I move on to the next one, just a

17 couple more questions.

18 Is it fair to say -- we agree that the

19 document is dated -- the document that's marked

20 Exhibit 4 is dated August 26th, 1946.

21 Is it fair to say that this document

22 would have been created on or around that date?

23 MR. MCGAHREN: Objection to the form of

24 the question.

25 Q. You can answer.

<p style="text-align: right;">Page 34</p> <p>1 A. I don't know. I mean, there's a date 2 that was produced. There's a date received. I 3 don't know when it was created. 4 Q. Okay. Does Sherwin-Williams have any 5 information to indicate that it was not created 6 on or around August 26th, 1948? 7 A. There's not any information to indicate 8 when it was created. 9 Q. Well, beyond the date of the document, 10 right? 11 A. One would assume it would be before that 12 date. 13 Q. Is that document in Sherwin-Williams' 14 files today? 15 MR. MCGAHREN: I'm going to object to 16 the form of the question and to the fact that the 17 question's outside the scope of the subjects. 18 A. If it is, I don't recall reviewing this 19 document, so I don't know the answer to that. 20 Q. Okay. Does Sherwin-Williams have any 21 indication -- have any information indicating 22 that the document marked as Exhibit 4 was not in 23 its possession at all times between 1946 and 24 today? 25 MR. MCGAHREN: Object to the form of the</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Sir, I'm going to mark as Exhibit 5 a 2 document that has a cover on the first page 3 saying Sherwin-Williams World. It's dated 4 January-February 1948 and it has a Bates stamp 5 TSWC-FED, dash, leading zeros, 91201. 6 (S-W Exhibit 5, January-February 1948 7 Sherwin-Williams World, Bates-labeled 8 TSWC-FED-00091201 - 1216, was marked for 9 purposes of identification.) 10 Q. If you'd take a look at that document, 11 sir, and let me know if you've seen that before. 12 A. I don't recall reviewing this document. 13 Q. There's just one article within here I 14 want to call your attention to. If you could 15 turn to page 6 of the document itself as opposed 16 to the Bates number which ends in 91206. 17 A. I'm sorry. Page 6 is on the periodical 18 page number? 19 Q. Yes. 20 A. Okay. 21 Q. There's a headline that says 22 throughout -- the article titled says Newark 23 Plugs In Across the Nation. Let me know when you 24 get to that part, sir. 25 A. Okay. I'm at that page.</p>
<p style="text-align: right;">Page 35</p> <p>1 question. Outside the scope. 2 A. Can you repeat the question. 3 Q. Sure. 4 MR. MCDERMOTT: Outside the scope 5 objections, can we have an agreement that I don't 6 have to dispute that every time? 7 MR. MCGAHREN: No, you don't. 8 MR. MCDERMOTT: Okay. 9 MR. MCGAHREN: I'll just maintain my 10 objection. Thank you. 11 MR. MCDERMOTT: Okay. Well, on that 12 one, it relates to the topics I mentioned before, 13 which are -- if I can find Exhibit 1 -- within 14 the scope of the operations of the Newark plant, 15 Topic 2, Topic 5, Topic 9, and Topic 12. 16 MR. MCGAHREN: Same objection. 17 THE REPORTER: Can we go off the record 18 for a minute? 19 MR. MCDERMOTT: Sure. Let's go off the 20 record. 21 VIDEOGRAPHER: Off the record, 9:46. 22 (A recess was taken.) 23 VIDEOGRAPHER: On the record, 9:56. 24 THE REPORTER: We're on the record. 25 BY MR. MCDERMOTT:</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. And looking at this article, am I 2 correct that it is a -- it relates to the 3 Sherwin-Williams Newark plant? 4 A. The first I'm seeing it. Seeing that 5 the magazine is Sherwin World and it refers to 6 Newark, I would assume it -- it's regarding 7 activities at the plant. 8 Q. And the part I want to ask you about, 9 sir, is on the next page, the paragraph above the 10 heading Operation is Extensive. Let me know when 11 you get to that part. 12 A. Okay. 13 Q. And am I correct that that paragraph 14 reads: From the factory itself, two miles away, 15 pours an endless stream of widely varied paint 16 and varnish products. This Newark plant produces 17 virtually all the Sherwin-Williams paint sold in 18 the East, plus a large quantity for export. 19 Did I read that -- those two sentences 20 correctly, sir? 21 A. You're referring to the paragraph above 22 the Operation is Extensive? 23 Q. That's right. 24 A. Okay. Let me -- yes, that's how I read 25 that sentence. Two sentences.</p>

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1 Q. And then later in the paragraph, it
2 states: Among specific items made are -- and
3 then it lists a number of products.
4 Do you see that part of the paragraph,
5 sir?
6 A. I do.
7 Q. And within the list of products in that
8 sentence, it states: Pestroy DDT insecticides.
9 Do you see that, sir?
10 A. I see that.
11 Q. As the corporate designee of
12 Sherwin-Williams testifying today, do you agree
13 that that paragraph is indicating that Pestroy
14 DDT insecticides were made at the Newark plant as
15 of the day of this publication?
16 MR. MCGAHREN: Objection to the form of
17 the question.
18 Q. You can answer.
19 A. I don't know the context. The verb
20 "made," I don't know if that means that they were
21 passed through the site, if they were -- if it
22 was an ingredient that was actually put together
23 at the site.
24 So that's how this reads. I don't know
25 the actual activities that took place at Newark

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1 related to the mixing or distribution of Pestroy.
2 Q. As the corporate designee of
3 Sherwin-Williams, you would agree that the
4 paragraph is indicating that Pestroy DDT
5 insecticides were present at the site as part of
6 the Sherwin-Williams operations at the Newark
7 plant, at least as of the date of this
8 publication?
9 A. Yes.
10 Q. And you testified a moment ago, I
11 believe, that you don't recall having seen this
12 document before; is that right?
13 A. If I do, I don't remember reading this
14 specific article.
15 Q. So is it fair to say that you didn't do
16 anything in preparing for this deposition to
17 determine what this document means when it says,
18 among specific items made, includes Pestroy DDT
19 insecticides?
20 MR. MCGAHREN: Objection to the form of
21 the question.
22 A. I'm not sure I understand the question.
23 Q. Sure.
24 You testified a moment ago that you --
25 it was unclear to you what the document means

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1 when it uses the word "made"; is that fair?
2 A. Correct.
3 Q. And my question is just, in preparation
4 for the deposition, did you do anything to
5 identify any information indicating what this
6 document means when it says "made DDT
7 insecticides"?
8 MR. MCGAHREN: Same objections.
9 A. Yes. Since I'm seeing this article for
10 the first time, I'm not prepared to understand
11 that verb, no.
12 Q. Understood.
13 I have one more question on that
14 document, sir.
15 As the corporate designee at
16 Sherwin-Williams, do you have an understanding of
17 whether that document is in the possession of
18 Sherwin-Williams?
19 MR. MCGAHREN: Objection to the form of
20 the question. It's also outside the scope of the
21 subjects notice.
22 MR. MCDERMOTT: Again, I disagree --
23 MR. MCGAHREN: You can testify if you
24 know the answer.
25 MR. MCDERMOTT: I disagree about

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1 "outside the scope," and it relates to the same
2 topics I listed the last time, for the record.
3 MR. MCGAHREN: I'll maintain my
4 objection.
5 You can answer if you know.
6 A. So I don't recall seeing this in my
7 preparation and I don't know if it's in Sherwin's
8 possession.
9 Q. Are you familiar with the publication
10 Sherwin-Williams World?
11 A. There is a kind of Center of Excellence
12 that I believe we have a lot of these former
13 publications highlighted in the headquarters
14 where I think it's similar but under different
15 titles today.
16 Q. It's fair to say that when this document
17 was created, it was created by Sherwin-Williams?
18 MR. MCGAHREN: Objection to the form of
19 the question.
20 Q. Let me rephrase that.
21 MR. MCGAHREN: It's also outside the
22 scope of the subjects.
23 Q. Is it fair to say that when that
24 document was created, it was created by
25 Sherwin-Williams or by someone on

<p style="text-align: right;">Page 42</p> <p>1 Sherwin-Williams' behalf?</p> <p>2 MR. MCGAHREN: Same objection.</p> <p>3 A. The cover page said it was published for</p> <p>4 Sherwin-Williams' employees. Aside from that, I</p> <p>5 can't speak to who or why published it -- who or</p> <p>6 why they published it.</p> <p>7 Q. I'm going to mark as Exhibit 6 a</p> <p>8 document that has the title Outline of History of</p> <p>9 the Sherwin-Williams Company, and it has a Bates</p> <p>10 number ending in 115814.</p> <p>11 (S-W Exhibit 6, Outline of History of</p> <p>12 The Sherwin-Williams Company,</p> <p>13 Bates-labeled TSWC-FED-00115814 - 5897,</p> <p>14 was marked for purposes of</p> <p>15 identification.)</p> <p>16 Q. If you would take a look at this</p> <p>17 document and let me know if you've seen this one</p> <p>18 before, sir.</p> <p>19 A. I have not seen this document before.</p> <p>20 Q. If you look at the cover page, there's a</p> <p>21 statement below the title that says these records</p> <p>22 were originally written up by E.E. -- it looks</p> <p>23 like W. Garfield in 1939, comma, revised and</p> <p>24 extended by someone else in 1948.</p> <p>25 Is that a fair paraphrase of that</p>	<p style="text-align: right;">Page 44</p> <p>1 Sherwin-Williams testifying today, did</p> <p>2 Sherwin-Williams begin selling Pestroy DDT</p> <p>3 insecticide in 1945?</p> <p>4 MR. MCGAHREN: Objection to the form.</p> <p>5 It's outside the scope of the subjects.</p> <p>6 Q. You can answer.</p> <p>7 A. I don't know the answer to that. I</p> <p>8 mean, based on this sentence, it indicates it was</p> <p>9 put on the market for general sale in 1945.</p> <p>10 Q. In your preparation for the deposition,</p> <p>11 did you see anything that would indicate that</p> <p>12 that's not correct?</p> <p>13 A. I've not.</p> <p>14 Q. I want to mark as Exhibit 7 a one-page</p> <p>15 document.</p> <p>16 (S-W Exhibit 7, Pestroy advertisement,</p> <p>17 Bates-labeled OCC-TIG-E01577838, was</p> <p>18 marked for purposes of identification.)</p> <p>19 MR. MCGAHREN: Thank you.</p> <p>20 Q. That has a Bates number in the bottom</p> <p>21 corner ending in 1577838. And I misspoke. It</p> <p>22 appears there is a short continuation on the</p> <p>23 second page.</p> <p>24 If you could take a look at that</p> <p>25 document that's been marked as Exhibit, Exhibit 7</p>
<p style="text-align: right;">Page 43</p> <p>1 statement, sir?</p> <p>2 A. That's how I read it, as well.</p> <p>3 Q. If I could direct your attention to a</p> <p>4 page toward the end. And the Bates number in the</p> <p>5 bottom right-hand corner ends in 115896.</p> <p>6 Have you made your way to that page,</p> <p>7 sir?</p> <p>8 A. 5896?</p> <p>9 Q. Yes.</p> <p>10 A. I'm at that page.</p> <p>11 Q. Okay. And the title of that page -- or</p> <p>12 the year at the top is 1945; is that right?</p> <p>13 A. That's correct.</p> <p>14 Q. And the first sentence of that page</p> <p>15 states: Pestroy, DDT insecticide and</p> <p>16 Weed-No-More 2, 4-D selective weed kill r put on</p> <p>17 the market for general sale by Sherwin-Williams</p> <p>18 and all subsidiary companies.</p> <p>19 Did I read that correctly, sir?</p> <p>20 A. Yes.</p> <p>21 THE WITNESS: There's someone that wants</p> <p>22 to join.</p> <p>23 THE REPORTER: He'll take care of it.</p> <p>24 Thank you.</p> <p>25 Q. As the corporate representative for</p>	<p style="text-align: right;">Page 45</p> <p>1 and let me know if you've seen that before, sir.</p> <p>2 A. I have seen this.</p> <p>3 Q. Is this an advertisement for the</p> <p>4 Sherwin-Williams product Pestroy DDT? Is that</p> <p>5 fair?</p> <p>6 A. Yes.</p> <p>7 Q. And it appears from this advertisement</p> <p>8 that Pestroy DDT was available containing</p> <p>9 different percentages of DDT as an active</p> <p>10 ingredient?</p> <p>11 MR. MCGAHREN: Objection to the form of</p> <p>12 the question.</p> <p>13 Q. You can answer.</p> <p>14 A. The image shows a product with what</p> <p>15 appears to be a 10 percent DDT concentration,</p> <p>16 another one with 6 percent. So it appears there</p> <p>17 are at least those two.</p> <p>18 Q. I'm going to mark as Exhibit 8 a</p> <p>19 document that has the title Paint Manufacturing</p> <p>20 Department Factory Output Report. And the Bates</p> <p>21 number in the bottom right-hand corner ends in</p> <p>22 91182.</p> <p>23 (S-W Exhibit 8, Paint Manufacturing</p> <p>24 Department Factory Output Report,</p> <p>25 Bates-labeled TSWC-FED-00091182 - 1200,</p>

<p style="text-align: right;">Page 46</p> <p>1 was marked for purposes of</p> <p>2 identification.)</p> <p>3 Q. If you could take a look at that</p> <p>4 document, sir, and let me know if you've seen it</p> <p>5 before.</p> <p>6 A. I've looked at one or two pages of this</p> <p>7 document.</p> <p>8 Q. And when you say that, you mean prior to</p> <p>9 the deposition, you'd previously had seen one or</p> <p>10 two pages from the document; is that -- is that</p> <p>11 right?</p> <p>12 A. That's correct.</p> <p>13 Q. If I could turn your attention to the</p> <p>14 Bates -- the page that has the Bates number</p> <p>15 ending in 91190.</p> <p>16 You've had a chance to take a look at</p> <p>17 that page?</p> <p>18 A. I've seen this page, yes.</p> <p>19 Q. And toward the bottom of that page,</p> <p>20 there's two line items that appear to say</p> <p>21 "Pestroy" with some numbers.</p> <p>22 Is that -- is that accurate?</p> <p>23 A. Yeah, I see the words "Pestroy."</p> <p>24 Q. Is this the fill sheet that you were</p> <p>25 referring to earlier in the deposition?</p>	<p style="text-align: right;">Page 48</p> <p>1 previous year, 113,081 pounds of Pestroy were</p> <p>2 output from the Newark plant?</p> <p>3 MR. MCGAHREN: Objection to the form of</p> <p>4 the question.</p> <p>5 Q. You can answer.</p> <p>6 A. I don't see the units, so I'm not sure</p> <p>7 of the units. Maybe it's listed and I'm not</p> <p>8 seeing it. But that number appears to be the</p> <p>9 output from the prior year.</p> <p>10 Q. If you look at the bottom of the page,</p> <p>11 there are some handwritten numbers. And in the</p> <p>12 leftmost column, it appears to -- is it correct</p> <p>13 that it says -- it notes gallons, and then below</p> <p>14 that it appears to note pounds?</p> <p>15 MR. MCGAHREN: Objection to the form of</p> <p>16 the question.</p> <p>17 A. It's very difficult to read, and I'm not</p> <p>18 sure what it references in this entire page.</p> <p>19 Q. You would agree that whatever unit of</p> <p>20 measurement they're using in this document, the</p> <p>21 quantity recorded as being output from the Newark</p> <p>22 plant during the year preceding September 1st,</p> <p>23 1947, is 113,081; is that fair?</p> <p>24 MR. MCGAHREN: Objection to the form of</p> <p>25 the question.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. Yes.</p> <p>2 Q. And at the top right-hand corner,</p> <p>3 there's the handwritten word "Newark" next to the</p> <p>4 word "factory." That's correct, sir, for this</p> <p>5 page?</p> <p>6 A. That's correct.</p> <p>7 Q. It's your understanding that this is a</p> <p>8 Factory Output Report for the Newark factory</p> <p>9 during September 1st, 1947, to August 1948?</p> <p>10 A. That's what the header indicates.</p> <p>11 Q. And in those line items that have the</p> <p>12 word "Pestroy," the first Pestroy line item,</p> <p>13 it -- there's several columns on the page.</p> <p>14 And am I correct that the columns</p> <p>15 indicate that, this year, 8,993 pounds of Pestroy</p> <p>16 were output from the Newark plant?</p> <p>17 MR. MCGAHREN: Objection to the form of</p> <p>18 the question.</p> <p>19 Q. Is that a fair interpretation of that</p> <p>20 line item?</p> <p>21 A. You're referring to the 8993?</p> <p>22 Q. Yes.</p> <p>23 A. That's what it indicates.</p> <p>24 Q. And in the column adjacent to that, that</p> <p>25 same line item for Pestroy indicates that, the</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. You can answer.</p> <p>2 A. Yeah. The units are uncertain.</p> <p>3 Every -- everything on this page indicates</p> <p>4 "filled," which indicates it was put into a</p> <p>5 container. That's, that's, that's how I read it.</p> <p>6 Q. And then there's another line item below</p> <p>7 that first one that also states Pestroy in the</p> <p>8 leftmost column.</p> <p>9 Do you see that one, sir?</p> <p>10 A. The rightmost column? I'm sorry?</p> <p>11 Q. There's the two line items that refer to</p> <p>12 Pestroy, right, toward the bottom of the page?</p> <p>13 A. Correct.</p> <p>14 Q. And we just -- we just talked about the</p> <p>15 top line item that says "Pestroy," right?</p> <p>16 A. Correct.</p> <p>17 Q. And then below that, there's another</p> <p>18 line item which says "Pestroy," which indicates a</p> <p>19 fill of 105,472; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. So is it fair to say, based on this</p> <p>22 document, that the output from the Newark plant</p> <p>23 of Pestroy in September 1947 through August 1948</p> <p>24 is over 200,000 gallons or pounds?</p> <p>25 MR. MCGAHREN: Objection to the form of</p>

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1 the question.

2 Q. Is that a fair interpretation of this

3 document, sir?

4 A. It indicates that that's the fill volume

5 in pounds or gallons in that time window.

6 Q. Does Sherwin-Williams have any

7 information to indicate that that interpretation

8 is not correct?

9 MR. MCGAHREN: Objection to the form of

10 the question.

11 Q. You can answer.

12 A. Not, not that I'm aware of.

13 Q. Earlier in the deposition, you

14 referenced having seen this document for the

15 first time, I think you said about six week ago.

16 Is that -- is that right? Am I getting

17 that right?

18 MR. MCGAHREN: Objection to the form of

19 the question.

20 A. I believe earlier I said "this week,"

21 but --

22 Q. Okay.

23 A. -- but it may have been in the last two

24 weeks.

25 Q. That's right. My mistake.

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1 Do you know where this document came

2 from when it was given to you?

3 A. The origin of it, I would be

4 speculating. I'm not certain.

5 Q. Were you told where this came from?

6 Were you told where it came from?

7 MR. MCGAHREN: I'm going to object.

8 And you can answer that question to the

9 extent it doesn't reveal attorney-client

10 communication.

11 A. If I was told, I don't recall.

12 Q. When did you first start preparing for

13 the deposition today?

14 A. I don't have an exact date. I'm

15 assuming six weeks, plus or minus one or two

16 weeks.

17 Q. What did you do to prepare?

18 A. Were provided a lot of the documents

19 you've just presented, plus, plus many more. And

20 I had several meetings to become briefed on them

21 and then time in between to, to read and try to

22 understand the history.

23 Q. About how many documents do you think

24 you reviewed in the course of preparing for this

25 deposition?

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1 A. More than ten, less than 100.

2 Q. You said you were given this document in

3 the last two weeks. Were you provided other

4 documents before that at an earlier time?

5 A. Yes.

6 Q. When you were provided this document

7 that's marked as Exhibit 8 within the last two

8 weeks, were there other documents provided to you

9 along with this one at the same time?

10 A. I believe the day that I spent time

11 reviewing this, did review others. I'll be

12 honest. I don't recall if this was provided

13 electronically or on paper. So others were

14 viewed in the same time window that this was.

15 Q. Who provided this document to you?

16 A. Our counsel.

17 Q. Did anybody other than counsel in the

18 course of all your preparation for this

19 deposition provide you documents?

20 A. No.

21 Q. Which -- so is it fair to say that to

22 prepare for the deposition -- among your

23 preparation for the deposition, you received

24 documents from and met with counsel?

25 A. Yes.

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1 Q. Which counsel did you meet with?

2 A. Can you be more specific? Do you want

3 specific names?

4 Q. Sure. Yeah. Which lawyers did you work

5 with to prepare for this deposition?

6 A. Okay. All of the -- our legal counsel

7 present, as well as Bart Herbert.

8 Q. And which lawyer specifically provided

9 you the documents that you said you received from

10 counsel?

11 A. Debra.

12 Q. At any time, in preparing for the

13 deposition, did you make a request of anybody at

14 Sherwin-Williams to find any information for you?

15 A. I did not.

16 Q. At any time in the course of preparing

17 for the deposition, did you make a request of

18 somebody who was acting on behalf of

19 Sherwin-Williams to find information for you?

20 A. I did not.

21 Q. Just referring back briefly to Exhibit

22 8, sir, the Factory Output Report.

23 Am I correct that this is a -- this is a

24 record generated by Sherwin-Williams in the

25 course of conducting its business?

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1 A. I don't know who and how it was
2 generated. All I can speculate on is the headers
3 that are on this.

4 MR. MCGAHREN: I'll ask you not to
5 speculate.

6 Q. Does Sherwin-Williams have any
7 information indicating that this is not -- this
8 was not created by or on behalf of
9 Sherwin-Williams in the course of conducting its
10 business relating to the Newark plant?

11 A. No.

12 Q. I'm going to show you the next document
13 that I'll mark as Exhibit 9.

14 (S-W Exhibit 9, May 22, 1947 document,
15 Bates-labeled TSWC-FED-00093671 - 3692,
16 was marked for purposes of
17 identification.)

18 Q. The first page is not very legible but
19 it does have a date stamped on there May 22nd,
20 1947. And if you could just take a look at that
21 document, sir, and let me know if you've seen
22 that one before.

23 For the record, the Bates number of the
24 first page ends in 93671.

25 A. I do not recall reviewing this document.

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1 Q. The page I want to ask you about on this
2 document ends -- the Bates number for that page
3 ends in 93675.

4 In the bottom half of that page, do you
5 see, sir, the section that has several headings
6 with the word "Pestroy"? Do you see that part of
7 the page?

8 A. I do.

9 Q. And the part specifically I want to ask
10 you about is the last sentence on that page which
11 states: Mr. Gaarder advised that the
12 manufacturer on Pestroy 6 percent reported at the
13 Newark plant was due to material which had been
14 previously manufactured and was filled last week.

15 Did I read that correctly, sir?

16 A. That's how I read it.

17 Q. As the corporate designee for
18 Sherwin-Williams, do you agree that this
19 statement indicates that, as of the time period
20 referenced in this document, Pestroy 6 percent
21 was present at the Newark plant as part of the
22 Sherwin-Williams operations?

23 A. Present, yes.

24 Just to clarify, yeah, present at the
25 Newark plant. That's the way I read it, as well.

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1 Q. And are you aware of any information
2 that would indicate that this document was not
3 created by or on behalf of Sherwin-Williams as
4 part of conducting its operations in 1947?

5 MR. MCGAHREN: Objection to the form of
6 the question.

7 You can answer.

8 Q. You can answer.

9 A. I'm sorry. Can you repeat that.

10 Q. Sure.

11 As the corporate designee for
12 Sherwin-Williams, are you aware of any
13 information that would indicate that this was
14 not -- this document was not created by or on
15 behalf of Sherwin-Williams as part of conducting
16 its, its operations in 1947?

17 MR. MCGAHREN: Same objection.

18 A. No.

19 Q. I want to mark as Exhibit 10 the next
20 document which is dated May 23rd, 1949.

21 (S-W Exhibit 10, Board of Operators
22 1407th Meeting, Bates-labeled
23 TSWC-FED-00093761 - 3778, was marked for
24 purposes of identification.)

25 MR. MCGAHREN: Thanks.

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1 MR. MCDERMOTT: Sure.

2 Q. If you could take a look at the document
3 that has been marked as Exhibit 10, Mr. Vosicky,
4 and let me know if you've seen this document
5 before.

6 A. I have not.

7 Q. Just looking at the first page of the
8 document, would you agree that this -- well, the
9 title says Board of Operators, 1,407th meeting.
10 And it's dated May 23rd, 1949. Is that -- is
11 that right?

12 A. That's the title.

13 Q. And the page I want to ask you about has
14 a Bates number ending in 93764. It's about four
15 pages in. And the section of that page, there's
16 a heading that says: 16508 - Agricultural
17 Chemicals.

18 Do you see that section?

19 A. I do.

20 Q. And beneath that heading, am I correct
21 that it says: 6 Percent Pestroy Liquid Coating.
22 It was reported that we have been filling 6
23 percent Pestroy liquid coating in drums at
24 Cleveland and shipping to Newark. This practice
25 is to be discontinued due to the freight angle,

<p style="text-align: right;">Page 58</p> <p>1 plus the fact there are ample stocks of this</p> <p>2 product at places closer to Newark.</p> <p>3 Did I read that, that part of the</p> <p>4 document correctly, sir?</p> <p>5 A. Yes. That's how I read it.</p> <p>6 Q. As the corporate representative of</p> <p>7 Sherwin-Williams, do you agree that the statement</p> <p>8 in this document that I just read is indicating</p> <p>9 that Pestroy product with 6 percent DDT as an</p> <p>10 active ingredient was being transported in drums</p> <p>11 to the Newark plant during Sherwin-Williams'</p> <p>12 operation?</p> <p>13 A. I don't see anything about drums. It</p> <p>14 just says it was filled in Cleveland and shipped</p> <p>15 to Newark.</p> <p>16 Q. Do you see it's about four words in on</p> <p>17 the second line where it references --</p> <p>18 A. I'm sorry. Yes, you're correct.</p> <p>19 Q. Does Sherwin-Williams have any</p> <p>20 information indicating that this -- that the</p> <p>21 statement in this document is not correct?</p> <p>22 A. There's no information I've seen to</p> <p>23 refute this.</p> <p>24 Q. I'd like to go back to our discussion</p> <p>25 earlier about Exhibit 3, which is the March 1995</p>	<p style="text-align: right;">Page 60</p> <p>1 request any of the documents that we just looked</p> <p>2 at?</p> <p>3 A. No, I do not know if he had access or</p> <p>4 availability to these.</p> <p>5 MR. MCGAHREN: How are you doing? Do</p> <p>6 you need a break?</p> <p>7 THE WITNESS: Sure.</p> <p>8 MR. MCGAHREN: Would you mind giving the</p> <p>9 witness a break?</p> <p>10 MR. MCDERMOTT: Yeah. It's a good time</p> <p>11 for it.</p> <p>12 VIDEOGRAPHER: Off the record, 10:37.</p> <p>13 (A recess was taken.)</p> <p>14 VIDEOGRAPHER: On the record, 10:51.</p> <p>15 BY MR. MCDERMOTT:</p> <p>16 Q. Mr. Vosicky, I'm going to mark the next</p> <p>17 document which will be Exhibit 11, which is a set</p> <p>18 of handwritten notes.</p> <p>19 (S-W Exhibit 11, Handwritten notes,</p> <p>20 Bates-labeled SW0001128 - 1135, was</p> <p>21 marked for purposes of identification.)</p> <p>22 MR. MCGAHREN: Thank you.</p> <p>23 Q. Which is titled Newark at the top, and</p> <p>24 it appears to be dated November 11th, 1981,</p> <p>25 bearing the Bates number SW0001128, for the</p>
<p style="text-align: right;">Page 59</p> <p>1 response to EPA's 104E request.</p> <p>2 Do you have that document in front of</p> <p>3 you?</p> <p>4 A. I do.</p> <p>5 Q. Am I correct that earlier you testified</p> <p>6 that it's your understanding as the corporate</p> <p>7 representative of Sherwin-Williams that</p> <p>8 Mr. McConnell, when submitting this document,</p> <p>9 understood the response with respect to DDT at</p> <p>10 the Newark plant to be correct at the time?</p> <p>11 Do you recall that testimony?</p> <p>12 MR. MCGAHREN: I'm going to object to</p> <p>13 the form of the question.</p> <p>14 A. Yes.</p> <p>15 Q. And I believe you said that was -- your</p> <p>16 understanding was that, based on the information</p> <p>17 available at the time, Mr. McConnell --</p> <p>18 Mr. McConnell understood that response to EPA to</p> <p>19 be accurate.</p> <p>20 Is that a fair --</p> <p>21 MR. MCGAHREN: Same objection.</p> <p>22 Q. -- recitation?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know whether Mr. McConnell had in</p> <p>25 his possession when he responded to the 1993 104E</p>	<p style="text-align: right;">Page 61</p> <p>1 record.</p> <p>2 If you could take a look at that</p> <p>3 document, sir, and let me know if you've seen</p> <p>4 this one before.</p> <p>5 A. Yes, I've seen this.</p> <p>6 Q. Where did you see this document?</p> <p>7 A. In the period of the deposition</p> <p>8 preparation.</p> <p>9 Q. Is it your understanding that this</p> <p>10 document came from the files of Sherwin-Williams?</p> <p>11 A. That is my understanding.</p> <p>12 Q. Could I turn your attention to what is</p> <p>13 marked as page 7 in handwriting of the document?</p> <p>14 And it has the Bates number 1134 in the bottom</p> <p>15 right corner.</p> <p>16 Am I correct that at the top of that</p> <p>17 page it refers to a person named Ray Cebulski?</p> <p>18 A. That is the name on the top of the page.</p> <p>19 Q. Do you know who Ray Cebulski is?</p> <p>20 A. I believe, in preparation, there was an</p> <p>21 affidavit with his name on it. But I don't</p> <p>22 know -- I don't recall his role at the site, at</p> <p>23 which time.</p> <p>24 Q. Is it your understanding that he is a --</p> <p>25 well, currently, is a former employee of</p>

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1 Sherwin-Williams?

2 A. I believe he worked at the Newark plant,

3 based on the document review.

4 Q. Next to Mr. Cebulski's name, in these

5 handwritten notes, it states: Historical input.

6 Is that -- is that right?

7 A. "Historical" or "hysterical," but I

8 think it's "historical."

9 Q. And then later in the page, about, I

10 don't know, maybe ten lines up, there's a

11 statement in handwriting that says: A small

12 package filling DDT, et cetera.

13 If you could take a look at that line

14 and let me know if you agree that that's what

15 that says.

16 A. That's how I would read that line.

17 Q. As the corporate representative of

18 Sherwin-Williams, do you have an understanding of

19 the purpose for which this document was created?

20 A. I don't understand the purpose for this

21 document.

22 Q. Do you know who, who took these notes,

23 who actually created the document?

24 A. The very first line has the name Robert.

25 I don't know if it's "Wavering" or what the name

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1 is. But -- so that may have been the author.

2 I'm not certain.

3 Q. And as the corporate representative

4 of -- let me back up.

5 As the corporate designee of

6 Sherwin-Williams testifying here today, do you

7 agree that the statement that we just looked at

8 referring to small package filling DDT,

9 et cetera, indicates the presence of DDT at the

10 Newark plant during the operations conducted by

11 Sherwin-Williams?

12 A. Based on this document, that's not

13 enough information to indicate much of anything.

14 So yeah, I don't know if that indicates

15 an activity at the site; if that's a note for

16 another Sherwin site. I don't know what to infer

17 from that.

18 Q. You would agree the reference is --

19 well, let me back up.

20 You would agree, as the corporate

21 designee of Sherwin-Williams, that this document

22 containing these handwritten notes was prepared

23 regarding the Newark plant?

24 MR. MCGAHREN: Objection to the form.

25 Q. Is that fair to say?

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1 A. The overall document appears to be a

2 summary of Newark activities. I couldn't speak

3 line for line if they're referring to what's

4 happening within the four walls or the property

5 boundary.

6 Q. If I could refer you to -- well, just to

7 close that part, you would agree that the

8 document on the page that we just looked at

9 references DDT, right?

10 A. It does read "small package filling DDT,

11 et cetera."

12 Q. If you look at the page prior to that,

13 page 6 of the handwritten notes. And I just want

14 to ask you about the -- what looks like the

15 second paragraph down which states: Ray

16 Cebulski, something, foreman. Check for past

17 history of dumping at -- or on-site.

18 If you would take a look at that

19 statement, sir, and let me know if that's an

20 accurate reading of what that -- those notes say.

21 A. Yeah. It's not the cleanest writing in

22 the second line. That could very well be what it

23 says.

24 Q. Would you agree that, based on the date

25 of the document, these notes appear to have been

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1 prepared in November of 1981?

2 A. That's the date on the page. I don't

3 know if it was written on that date. Not to be

4 difficult, but I don't know if that's the date it

5 was actually written.

6 Q. Sherwin-Williams doesn't have any

7 information indicating that these notes were not

8 prepared in or around November 11th, 1981?

9 A. That's correct.

10 Q. You mentioned a few moments ago that you

11 had seen this document as part of your

12 preparation -- deposition preparation; is that --

13 is that right?

14 A. Yes.

15 Q. When did you see this document?

16 A. In the preparation window we discussed,

17 so six weeks, plus or minus a couple weeks.

18 Q. Do you recall specifically when you

19 reviewed that document for the first time?

20 A. No. In that time period, though.

21 Q. If I could refer you back to Exhibit 2,

22 sir, which is the 104E request from EPA in

23 January of 1993.

24 And if I could refer you to what we

25 mentioned earlier, which is Attachment B, the

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1 second attachment to that document which has the
2 heading Instructions For Responding to
3 Requests -- to Request For Information.
4 A. Can you repeat the number and section.
5 Q. Sure.
6 At the top of the page, it says
7 Attachment B, and it's numbered page 7 of the
8 document.
9 A. Okay.
10 Q. Just let me know when you get to that
11 page, sir.
12 A. Okay.
13 Q. If you look at instruction number 3, am
14 I correct that EPA instructed Sherwin-Williams
15 that, in preparing your response to each
16 question, consult with all current or former
17 employees and agents of your company who may be
18 familiar with the matter to which the question
19 pertains.
20 Is that correct?
21 A. That is how number 3 reads, yes.
22 Q. And, as the corporate designee of
23 Sherwin-Williams, you agree that that was the
24 instruction provided to Sherwin-Williams by EPA
25 in 1993; is that right?

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1 A. Yes.
2 Q. And if you could turn back to Exhibit 3,
3 which is the March 1995 response to EPA. At page
4 4, there is a response to Request Number 16
5 that's listed on that page.
6 And on Exhibit 2 of the text of the
7 request from EPA, Number 16 reads: Provide the
8 name, address, telephone number, title, and
9 occupation of the person or persons answering
10 this Request For Information and state whether
11 such person or persons has personal knowledge of
12 the responses.
13 A. I'm sorry. You're back to S-W 2?
14 Q. Yes. Number 16.
15 A. Number 16. Okay.
16 Q. And you agree that number -- Request
17 Number 16 reads: Provide the name, address,
18 telephone number, title, and occupation of the
19 person answering this Request For Information and
20 state whether such person has personal knowledge
21 of the responses. In addition, identify each
22 person who assisted in any way in responding to
23 the Request For Information and specify the
24 request to which each person assisted in
25 responding.

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1 You'd agree that was the Request Number
2 16 that EPA sent to Sherwin-Williams?
3 MR. MCGAHREN: Objection to the form.
4 A. That's what the language reads on the
5 RFI Number 16.
6 Q. And then on Exhibit 3, which is
7 Sherwin-Williams' response, Sherwin-Williams
8 responded to EPA as to Number 16: The person
9 answering this request is Donald J. McConnell,
10 counsel for the Sherwin-Williams Company, and
11 obtained the information to respond to those
12 questions from the following individuals, and
13 then it lists four people.
14 Do you see that, sir?
15 A. I do.
16 Q. Okay. The first one is Dr. Gordon
17 Kuntz. Do you know who Dr. Kuntz is?
18 A. Yes. I met Dr. Kuntz.
19 Q. Is Dr. Kuntz a current employee of
20 Sherwin-Williams today?
21 A. No.
22 Q. Is he retired?
23 A. Yes.
24 Q. Do you know when he retired?
25 A. I don't know the date.

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1 Q. Do you know approximately the year?
2 A. I'd be speculating the date range.
3 Q. Fair to say it's after 1995?
4 A. I really don't know.
5 Q. The next person listed is Sue Free, who
6 is identified as an environmental specialist with
7 the Sherwin-Williams Company.
8 Do you know who Sue Free is?
9 A. My only familiarity is with this
10 deposition.
11 Q. Do you know whether Sue Free -- well, is
12 Sue Free currently an employee of
13 Sherwin-Williams?
14 A. I don't believe so.
15 Q. Was she at one point an employee of
16 Sherwin-Williams?
17 A. My understanding is yes, based on these
18 records.
19 Q. Do you know in 1995 whether she was a
20 current employee of Sherwin-Williams?
21 A. I don't.
22 Q. The next person listed is Wayne Murphy,
23 who is listed as the facility manager for the
24 Sherwin-Williams Company at Lister Avenue.
25 Do you know who Mr. Murphy is?

<p style="text-align: right;">Page 70</p> <p>1 A. I do not.</p> <p>2 Q. The next person listed is Marnie</p> <p>3 Sabatine, who is listed as environmental/chemist</p> <p>4 at the Sherwin-Williams Company, 60 Lister</p> <p>5 Avenue, Newark, New Jersey.</p> <p>6 Do you know who Ms. Sabatine is?</p> <p>7 A. I do not.</p> <p>8 Q. Do you have an understanding of whether</p> <p>9 Mr. McConnell, in assembling these responses to</p> <p>10 EPA's requests in 1995, consulted with any</p> <p>11 individuals other than the four people listed</p> <p>12 here?</p> <p>13 A. I do not know.</p> <p>14 Q. Do you know whether Mr. McConnell</p> <p>15 consulted with Ray Cebulski in 1995 in answering</p> <p>16 these responses?</p> <p>17 A. I don't know.</p> <p>18 Q. I'm going to mark as Exhibit 12 a</p> <p>19 document that has the title Affidavit of Theodore</p> <p>20 Danielak.</p> <p>21 (S-W Exhibit 12, Affidavit of Theodore</p> <p>22 Danielak, Bates-labeled SW0000008, was</p> <p>23 marked for purposes of identification.)</p> <p>24 Q. If you could take a look at that</p> <p>25 document, sir, and let me know if you've seen</p>	<p style="text-align: right;">Page 72</p> <p>1 Mr. Danielak states that, to his knowledge,</p> <p>2 Sherwin-Williams made and packaged DDT prior to</p> <p>3 his employment with Sherwin-Williams and until</p> <p>4 the 1950s.</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes. That's what the language reads.</p> <p>7 Q. And then the next sentence indicates</p> <p>8 that the packaging of DDT was performed in</p> <p>9 Building Number 7 at the Sherwin-Williams</p> <p>10 facility and Building Number 7 was removed after</p> <p>11 DDT ceased?</p> <p>12 A. Yes, that's what it reads.</p> <p>13 Q. As the corporate designee of</p> <p>14 Sherwin-Williams, do you agree that this document</p> <p>15 is indicating that Sherwin-Williams made and</p> <p>16 packaged DDT during the 1940s and '50s at the</p> <p>17 Newark plant?</p> <p>18 MR. MCGAHREN: Objection to the form.</p> <p>19 A. No.</p> <p>20 Q. Why not?</p> <p>21 A. The language Mr. Danielak used is</p> <p>22 inconsistent with a lot of other records that we</p> <p>23 have.</p> <p>24 Q. Which portion of Mr. Danielak's</p> <p>25 statement specifically is inconsistent with other</p>
<p style="text-align: right;">Page 71</p> <p>1 that before.</p> <p>2 For the record, this one has the Bates</p> <p>3 number S-W, six leading zeros, and then 8.</p> <p>4 Have you seen this document marked as</p> <p>5 Exhibit 12 before, sir?</p> <p>6 A. I believe I've seen four to five</p> <p>7 affidavits. I don't know that I've read this one</p> <p>8 in full detail.</p> <p>9 Q. Okay. Am I correct that the person who</p> <p>10 signed this affidavit is named Theodore Danielak?</p> <p>11 A. It appears so, yes.</p> <p>12 Q. Who is Mr. Danielak?</p> <p>13 A. I only know what this document says.</p> <p>14 so -- and this document indicates he was an</p> <p>15 employee at the plant for several years.</p> <p>16 Q. On paragraph 1, am I correct that</p> <p>17 Mr. Danielak indicates that he was employed by</p> <p>18 Sherwin-Williams Company from 1945 until 1984;</p> <p>19 and that during his tenure at the</p> <p>20 Sherwin-Williams facility located at 61 Lister</p> <p>21 Avenue in Newark, New Jersey, he was assigned to</p> <p>22 the Shipping Department?</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. And then in the next paragraph,</p>	<p style="text-align: right;">Page 73</p> <p>1 records that are in the possession of</p> <p>2 Sherwin-Williams?</p> <p>3 A. In particular, the phrase "made in</p> <p>4 package DDT."</p> <p>5 So everything else that we've looked at</p> <p>6 to this point indicates DDT was an ingredient in</p> <p>7 a finished good. There's no indication or</p> <p>8 supporting evidence that it was made at the site.</p> <p>9 Q. Do you recall the 1948 Sherwin-Williams</p> <p>10 World publication that we looked at as Exhibit 5</p> <p>11 earlier?</p> <p>12 A. Yes.</p> <p>13 Q. Am I correct that that publication</p> <p>14 stated in the section that we looked at that</p> <p>15 among the specific items made were Pestroy DDT</p> <p>16 insecticides?</p> <p>17 A. I just reopened the page. Can you</p> <p>18 remind me of which paragraph that's in.</p> <p>19 Q. Sure. It is in the first full paragraph</p> <p>20 of the page ending in Bates number 91207.</p> <p>21 A. Yeah. That's the language that was used</p> <p>22 in this article.</p> <p>23 Q. The use of the term "made" is consistent</p> <p>24 with the language used by Mr. Danielak in his</p> <p>25 affidavit in 1993; isn't that correct?</p>

<p style="text-align: right;">Page 74</p> <p>1 MR. MCGAHREN: Objection to the form.</p> <p>2 Q. You can answer.</p> <p>3 A. So yeah, they used the same verb.</p> <p>4 Q. The -- you testified a moment ago that</p> <p>5 Mr. Danielak's -- that the language used in</p> <p>6 Mr. Danielak's affidavit was not consistent with</p> <p>7 other records that are in the possession of</p> <p>8 Sherwin-Williams regarding its handling of DDT at</p> <p>9 the -- at the Newark plant; is that right?</p> <p>10 A. That's correct.</p> <p>11 Q. Which records specifically are you</p> <p>12 referring to?</p> <p>13 A. So a few items. One is -- yeah, there's</p> <p>14 no -- there's no evidence to support that DDT was</p> <p>15 synthesized or made on-site, based on maps or</p> <p>16 background of the plant.</p> <p>17 And then a lot of the inventory records</p> <p>18 simply indicate a filling of a finished good with</p> <p>19 DDT as an ingredient.</p> <p>20 Q. So, as I understand your testimony, maps</p> <p>21 in the possession of Sherwin-Williams of the</p> <p>22 Newark plant when it was in operation, it's your</p> <p>23 testimony that those are inconsistent with DDT</p> <p>24 being synthesized or made at the plant; is</p> <p>25 that -- is that a correct understanding?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Well, there's an Output Report for all</p> <p>2 of these products. I don't see DDT on it. The</p> <p>3 Output Report shows Pestroy which has DDT as an</p> <p>4 ingredient.</p> <p>5 Q. Would it be consistent with the</p> <p>6 information in the possession of Sherwin-Williams</p> <p>7 to say that Pestroy was being formulated at the</p> <p>8 Newark plant?</p> <p>9 MR. MCGAHREN: Objection to the form of</p> <p>10 the question.</p> <p>11 Q. You can answer.</p> <p>12 A. So this sheet simply states that it was</p> <p>13 filled in the volumes. So "filled" could mean it</p> <p>14 was passed through from another location;</p> <p>15 "filled" could mean that DDT was one raw material</p> <p>16 that went into -- that was mixed on-site and then</p> <p>17 filled at the location.</p> <p>18 So I'm not quite sure which of those</p> <p>19 they are. All I know is this indicates that the</p> <p>20 finished product was packaged there, or filled at</p> <p>21 that location.</p> <p>22 Q. So is it your understanding, as the</p> <p>23 corporate designee of Sherwin-Williams, that the</p> <p>24 fill sheet marked as Exhibit 8 could be referring</p> <p>25 to either passing through a product in its</p>
<p style="text-align: right;">Page 75</p> <p>1 A. Maps, as well as the logs, indicate that</p> <p>2 there was storage and it was a raw material that</p> <p>3 was put into a finished good.</p> <p>4 Q. When you say "logs," what are you</p> <p>5 referring to? What documents?</p> <p>6 A. I'm sorry. The ones that we just</p> <p>7 covered during this deposition.</p> <p>8 Q. When you say "logs," you mean the -- you</p> <p>9 called it a fill sheet. It said Factory Output</p> <p>10 Report at the top?</p> <p>11 A. Yes.</p> <p>12 MR. MCDERMOTT: What exhibit was that?</p> <p>13 Q. Exhibit 8, just for the record, do you</p> <p>14 agree that's the document we're referring to?</p> <p>15 A. Yes.</p> <p>16 Q. So other than the maps of the Newark</p> <p>17 plant while it was operating and the document</p> <p>18 that we've marked as Exhibit 8, are there any --</p> <p>19 as the corporate designee of Sherwin-Williams, is</p> <p>20 there any other information, information or</p> <p>21 documents in the possession of Sherwin-Williams</p> <p>22 that you believe contradicts the statement made</p> <p>23 regarding TDD -- DDT by Mr. Danielak in this, in</p> <p>24 this document marked Exhibit 12?</p> <p>25 MR. MCGAHREN: Objection to the form.</p>	<p style="text-align: right;">Page 77</p> <p>1 original container from another facility or</p> <p>2 mixing DDT with other ingredients to fill a</p> <p>3 container with the finished product at the plant?</p> <p>4 MR. MCGAHREN: Objection to the form.</p> <p>5 A. That's what it would indicate. Either</p> <p>6 it was filled into Sherwin package, produced</p> <p>7 somewhere else, it was mixed on-site, filled into</p> <p>8 this container. Those are the likely two</p> <p>9 scenarios. I would just be speculating which</p> <p>10 those are.</p> <p>11 Q. With respect to this affidavit that's</p> <p>12 marked as Exhibit 12, I would direct your</p> <p>13 attention to paragraph 3 which states: While I</p> <p>14 worked at Sherwin-Williams, I have observed what</p> <p>15 appeared to be paint floating in the Passaic</p> <p>16 River. It is my opinion that the paint floating</p> <p>17 in the river was being discharged from a pipe</p> <p>18 located at the Sherwin-Williams property.</p> <p>19 Did I read that statement correctly,</p> <p>20 sir?</p> <p>21 A. I'm sorry. We're back on the affidavit?</p> <p>22 Q. Yes.</p> <p>23 A. Paragraph 2?</p> <p>24 Q. Yes. Exhibit 12, paragraph 3.</p> <p>25 A. 3?</p>

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1 Q. Yeah.

2 A. Yes, I see that.

3 Q. Does Sherwin-Williams have any

4 information indicating that Mr. Danielak's

5 statement regarding observing paint floating in

6 the river, the Passaic River, is not correct?

7 A. Yes.

8 Q. What information does Sherwin-Williams

9 have to that effect?

10 A. First is the being discharged from a

11 pipe located at Sherwin-Williams' property. It

12 doesn't say the date that this exact observation

13 was made, or does it? This was August 1993.

14 MR. MCGAHREN: I'm going to just lay an

15 objection to a lack of foundation. I don't

16 believe you've established that Mr. Danielak is

17 an expert. He's offering opinions here.

18 Q. Well, the last question was specifically

19 with respect to that first -- that first sentence

20 in the paragraph that's not preceded by "my

21 opinion" where it says it was an observation of

22 his that he observed paint floating in the

23 Passaic River while he worked at the

24 Sherwin-Williams plant.

25 MR. MCGAHREN: Same objection. He's not

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1 an expert. There's more than one paint plant in

2 the vicinity.

3 A. And the question is that credible or is

4 there --

5 Q. Well, does Sherwin-Williams have any

6 information -- well, let me ask it this way:

7 Does Sherwin-Williams have any

8 information regarding Mr. Danielak's purported

9 observation that he states in this document?

10 A. I mean, at the same moment in time that

11 he observed this and put this in this statement,

12 there's not a counter witness that saw it

13 otherwise, so, so no.

14 MR. MCGAHREN: I'm going to object to

15 the form of the question.

16 Q. I want to mark as the next document

17 Exhibit 13.

18 (S-W Exhibit 13, 1-11-98 letter Re:

19 Environmental Evaluation Summary for the

20 Sherwin-Williams Facility located at 60

21 Lister Avenue, Newark, New Jersey,

22 Bates-labeled SW0001109 - 1122, was

23 marked for purposes of identification.)

24 Q. If you'd take a look at what I've marked

25 as Exhibit 13, sir, and let me know if you've

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1 seen that document before.

2 MR. MCGAHREN: This is not a document.

3 It doesn't appear to be complete.

4 Oh, I see it's stapled the wrong way.

5 MR. MCDERMOTT: I'll represent that this

6 is the extent and form in which the document was

7 produced to us.

8 BY MR. MCDERMOTT:

9 Q. Have you had a chance to look at Exhibit

10 13, sir?

11 A. Yes.

12 Q. Have you seen that document before?

13 A. Yes. It was provided.

14 Q. You saw this document for the first time

15 as part of your deposition preparation; is that

16 fair?

17 A. That's correct.

18 Q. Am I correct that this -- well, let me

19 back up.

20 Do you know who ENSR is?

21 MR. MCDERMOTT: For the court reporter,

22 that's spelled E-N-S-R.

23 A. Just from this deposition, these

24 documents. That's the only knowledge I have of

25 this firm.

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1 Q. Am I correct that this document is a

2 report dated January 11th, 1998, and it's being

3 sent to Mr. David Gustafson at Sherwin-Williams

4 from ENSR Consulting and Engineering?

5 Is that accurate?

6 A. Yes.

7 Q. And the heading on the document

8 indicates that it's regarding an environmental

9 evaluation summary for the Sherwin-Williams

10 facility located at 60 Lister Avenue, Newark,

11 New Jersey.

12 Is that -- is that right?

13 A. Yes.

14 Q. And it indicates in the first paragraph

15 that ENSR is reporting to Mr. Gustafson; that

16 ENSR Consulting and Engineering was -- and it

17 says "by retained" -- the Sherwin-Williams

18 Company to conduct an environmental site

19 evaluation at their paint manufacturing facility

20 located at 60 Lister Avenue in Newark, Essex

21 County, New Jersey; is that right?

22 A. Yes.

23 Q. And it says in the next paragraph that

24 ENSR conducted a site visit at the site on

25 July 2nd, 1998, for the purpose of initiating the

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1 site evaluation activities. And the purpose of

2 the site visit was to observe operations and

3 identify potential areas of concern in accordance

4 with the New Jersey Department of Environmental

5 Protections' requirements for preliminary

6 assessments.

7 MR. MCGAHREN: Objection to the form.

8 Q. Is that right?

9 A. Yes.

10 Q. Is it your understanding that ENSR was

11 retained by Sherwin-Williams in the process of

12 evaluating the potential closure of the Newark

13 plant in or around 1999?

14 A. I don't know. I don't know that.

15 Q. If you look at the next page, which is

16 page 2 of 13, at the end -- well, there's a

17 section that has the title Site History.

18 Do you see that section?

19 A. Yes.

20 Q. And the first paragraph beneath the

21 heading Site History reads -- well, the last

22 paragraph at the end -- the last paragraph of the

23 first sentence in that section reads: In

24 addition, three former and four current

25 Sherwin-Williams employees were interviewed.

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1 Do you see that sentence, sir?

2 A. Yes.

3 Q. Do you know who the three former and

4 four current -- well, let me back up.

5 As the corporate designee of

6 Sherwin-Williams, do you have any information

7 indicating that the statement that ENSR

8 interviewed three former and four current

9 Sherwin-Williams employees is not correct?

10 A. I just know what this document --

11 MR. MCGAHREN: Objection to form.

12 A. What this document reads is that these

13 were interviewed. I don't have any other

14 information.

15 Q. In the course of preparing for this

16 deposition, did you consult with anybody who you

17 understood to be affiliated with ENSR?

18 A. No.

19 Q. The next sentence --

20 MR. MCGAHREN: They don't exist anymore.

21 MR. MCDERMOTT: That's a fair point.

22 Q. I'm assuming you didn't consult with

23 anybody who you understood to be involved in this

24 retention of ENSR by Sherwin-Williams in 1998?

25 A. Correct.

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1 Q. The next sentence reads: Telephone

2 summary sheets are included as Attachment 2.

3 Do you see that sentence?

4 A. I do.

5 Q. At any time, have you seen or reviewed

6 the telephone summary sheets referenced in this

7 document as being included as Attachment 2?

8 A. I have not.

9 Q. If I could refer you to page 4 of 13 of

10 the document marked as Exhibit 13. There's a

11 section with the heading Sherwin-Williams

12 Operations.

13 Do you see that section, sir?

14 A. Yes.

15 Q. And the last sentence in the first

16 paragraph of that section reads: In addition,

17 interviews indicate that pesticide formulation

18 was conducted at the Newark facility. The

19 pesticide -- the pesticides were warehoused

20 on-site and shipped from the Newark plant.

21 Do you see those two sentences?

22 A. I do.

23 Q. As the corporate designee for

24 Sherwin-Williams, do you agree that, in that

25 paragraph, ENSR is communicating to

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1 Sherwin-Williams that former -- well, let me ask

2 a better question.

3 As the corporate designee of

4 Sherwin-Williams, do you agree that that

5 paragraph is communicating to Sherwin-Williams

6 that interviews conducted by ENSR revealed that

7 pesticide formulation was being conducted at the

8 Newark facility?

9 A. The language is soft. Interviews

10 indicate that it was conducted.

11 So, as the corporate witness, I wouldn't

12 say that's conclusive, but it indicates through

13 those discussions that that was the case.

14 Q. And one note on this document, sir. If

15 you go back to the front page.

16 A. Okay.

17 Q. It's dated January 11th, 1998. And

18 compare that to the rest of the document where

19 the heading reads January 11th, 1999.

20 Based on ENSR's statement in the second

21 paragraph of the document that ENSR conducted a

22 site visit on July 22nd, 1998, would you agree

23 that the cover page of this document -- well,

24 that this document was created in January -- in

25 January 1999, not January 1998?

<p style="text-align: right;">Page 86</p> <p>1 MR. MCGAHREN: Objection. Form.</p> <p>2 A. I don't know. I don't know if that's a</p> <p>3 typo or if that's a true statement.</p> <p>4 Q. I'm going to mark as Exhibit 14 -- one</p> <p>5 last question about Exhibit 13, actually.</p> <p>6 As the corporate designee of</p> <p>7 Sherwin-Williams, is it your understanding that</p> <p>8 this document came from Sherwin-Williams' files?</p> <p>9 MR. MCGAHREN: I'm going to object and</p> <p>10 state that it's outside the subjects.</p> <p>11 Q. You can answer.</p> <p>12 A. I don't know the origin or the source of</p> <p>13 this -- of this file.</p> <p>14 (S-W Exhibit 14, 12-8-98 intra-company</p> <p>15 correspondence, Bates-labeled SW0000163</p> <p>16 - 166, was marked for purposes of</p> <p>17 identification.)</p> <p>18 Q. I'm going to hand you what I've marked</p> <p>19 as Exhibit 14. This is a document dated</p> <p>20 December 8th, 1998. It's on Sherwin-Williams'</p> <p>21 letterhead and it says: Intracompany</p> <p>22 correspondence. The Bates number ends in 163.</p> <p>23 If you could take a look at this</p> <p>24 document, sir, and let me know if you've seen it</p> <p>25 before.</p>	<p style="text-align: right;">Page 88</p> <p>1 the environmental consulting company of ENSR</p> <p>2 (New Jersey) to conduct a nonobtrusive</p> <p>3 preliminary (environmental) site assessment.</p> <p>4 Is that -- is that correct? Did I read</p> <p>5 that correctly, sir?</p> <p>6 A. Yes.</p> <p>7 Q. And the next sentence reads: This study</p> <p>8 focused primarily on the history of site</p> <p>9 operations and ownership since about 1900,</p> <p>10 including Sanborn maps, aerial photos, interviews</p> <p>11 with prior retired employees, et cetera.</p> <p>12 Do you see that statement, sir?</p> <p>13 A. Yes.</p> <p>14 Q. And then if you turn to the next page,</p> <p>15 in the paragraph directly above the Section C,</p> <p>16 Demolition Options, there's a sentence that</p> <p>17 reads: Note the '86-'88 Newark investigation did</p> <p>18 not cover the east side of the site; the DSC</p> <p>19 buildings cover a former insecticide mixing</p> <p>20 operation.</p> <p>21 Do you see that sentence, sir?</p> <p>22 A. I do.</p> <p>23 Q. If you turn back to the first page and</p> <p>24 look at the list of recipients of this memo.</p> <p>25 Am I correct that it lists D. McConnell</p>
<p style="text-align: right;">Page 87</p> <p>1 A. I believe this was in the document</p> <p>2 review files.</p> <p>3 Q. You mean this was part of the documents</p> <p>4 that you reviewed in preparation for the</p> <p>5 deposition; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Am I correct that this is a memo dated</p> <p>8 December 8, 1998, among employees of</p> <p>9 Sherwin-Williams?</p> <p>10 A. Based on the header, it appears to be</p> <p>11 intracompany correspondence with our engineering</p> <p>12 team.</p> <p>13 Q. And the author of the memo, if you look</p> <p>14 at the signature line, it is David B. Gustafson;</p> <p>15 is that right?</p> <p>16 A. He signed off on it, so whether it was</p> <p>17 written on his behalf or he wrote it.</p> <p>18 Q. And I'm correct that in Exhibit 13</p> <p>19 [sic], the report from ENSR is addressed to</p> <p>20 Mr. Gustafson? Is that -- is that correct?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. If you look at the first section of this</p> <p>23 document which is entitled Background. And that</p> <p>24 reads: In anticipation of a plant shutdown, the</p> <p>25 Consumer Group (through Engineering) commissions</p>	<p style="text-align: right;">Page 89</p> <p>1 as one of the individuals who this memo was</p> <p>2 addressed to?</p> <p>3 A. D. McConnell is listed there.</p> <p>4 Q. Is that the same Donald McConnell who</p> <p>5 submitted in 1995 Sherwin-Williams' response to</p> <p>6 EPA's Request For Information?</p> <p>7 A. I don't know of an alternative Don</p> <p>8 McConnell. I couldn't state for sure.</p> <p>9 Q. And, as the corporate designee of</p> <p>10 Sherwin-Williams, you would agree that this memo</p> <p>11 going from Mr. Gustafson to Mr. McConnell</p> <p>12 references a former insecticide mixing operation</p> <p>13 at the Newark plant?</p> <p>14 MR. MCGAHREN: Objection to the form of</p> <p>15 the question.</p> <p>16 Q. You can answer.</p> <p>17 A. I'm sorry. Can you repeat the question.</p> <p>18 Q. Sure.</p> <p>19 As the corporate designee of</p> <p>20 Sherwin-Williams, do you agree that this memo</p> <p>21 going from Mr. Gustafson to Mr. McConnell</p> <p>22 references a former insecticide mixing operation</p> <p>23 at the Newark plant?</p> <p>24 MR. MCGAHREN: Same objection.</p> <p>25 A. Yeah, that language does include</p>

<p style="text-align: right;">Page 90</p> <p>1 insecticide mixing. And it appears D. McConnell 2 was on the recipient list. 3 Q. Do you know whether Mr. McConnell -- 4 well, let me ask it differently. 5 As the corporate representative of 6 Sherwin-Williams, did Mr. McConnell or anybody at 7 Sherwin-Williams supplement its response to EPA's 8 104E request to reflect any reference to 9 pesticide formulation or pesticide mixing at the 10 Newark plant? 11 MR. MCGAHREN: I'm going to object to 12 the form of the question. 13 A. So the request does not ask about 14 insecticides. It asks about specific materials. 15 I mean, this memo has the word 16 "insecticide." It doesn't have specific 17 chemicals. So I don't know that -- 18 I'm sorry. Can you ask your question 19 again. 20 Q. Sure. 21 Did Mr. McConnell or anybody at -- 22 anybody on behalf of Sherwin-Williams amend 23 Sherwin-Williams' response to EPA's 104E request 24 to reflect pesticide formulating or pesticide 25 mixing at the Newark plant?</p>	<p style="text-align: right;">Page 92</p> <p>1 sorry. 2 As the corporate designee of 3 Sherwin-Williams, what other kinds of 4 insecticides were involved in Sherwin-Williams' 5 operation at the Newark plant? 6 A. I don't know. My point is the RFI 7 request is asking different information than what 8 this memo indicates. This does not say any of 9 those COC [sic] materials, the materials of 10 concern. 11 Q. I understand. 12 My question is: Did Mr. McConnell or 13 anybody on behalf of Sherwin-Williams supplement 14 Sherwin-Williams' response to EPA to reflect 15 pesticide mixing or formulation at the Newark 16 plant? 17 MR. MCGAHREN: Asked and answered. 18 A. Yeah, so my answer is "no." 19 This does not trigger an amendment to 20 the RFI because it's not speaking of any specific 21 chemicals. 22 Q. So the answer's "no"? 23 A. Correct. 24 Q. When we were discussing Mr. Danielak's 25 affidavit which was marked as Exhibit 12, do you</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. MCGAHREN: Same objection. 2 A. So I've not seen evidence of that, but I 3 wouldn't relate the content of this menu with the 4 RFI Number 3 or 4. They're different requests. 5 One is asking for specific materials; one 6 references the potential presence of 7 insecticides. 8 Q. DDT is an insecticide, right, sir? 9 MR. MCGAHREN: Objection to the form. 10 And I'm going to object to being outside the 11 scope of the subject matter. 12 MR. MCDERMOTT: For the record, I 13 disagree. I think it's within the scope, but let 14 me reframe the question. 15 Q. Sherwin-Williams was marketing products 16 containing DDT as pesticides and insecticides; is 17 that a fair statement? 18 A. So I think we're -- we have two subjects 19 happening simultaneously. 20 So some of those ads or communications 21 indicated we had product, Pestroy DDT. This 22 memo, that does not mention DDT. It mentions 23 insecticide. There's a lot of types of 24 insecticides. 25 Q. As the corporate representative -- I'm</p>	<p style="text-align: right;">Page 93</p> <p>1 recall that -- I believe you testified that -- 2 you drew the distinction in your testimony -- and 3 you can tell me if this is a correct summary -- 4 between making or synthesizing DDT and either 5 passing through products containing DDT and/or 6 mixing products containing DDT as an active 7 ingredient, ingredient at the site. 8 Do you recall that distinction that you 9 drew in your testimony between making a product 10 with -- making DDT versus passing through or, 11 I'll say, blending the product that contains DDT 12 at the site? 13 A. Yes. 14 Q. The language used in both -- well, I'll 15 start with the language used in the ENSR memo 16 that's marked as Exhibit 13 where they say -- 17 they reference pesticide formulation occurring at 18 the Newark facility, is that characterization 19 consistent with blending of a product containing 20 DDT at the Newark plant? 21 A. Blending of -- 22 MR. MCGAHREN: Objection to form. 23 A. -- a product. 24 Can you refer to the specific ENSR spot 25 and language just so I can --</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. Sure.</p> <p>2 A. -- compare the two? And formulation</p> <p>3 language.</p> <p>4 Q. Sure. That is on page 4 of 13.</p> <p>5 A. Okay.</p> <p>6 Q. And it's the sentence that reads: In</p> <p>7 addition, interviews indicate that pesticide</p> <p>8 formulation was conducted at the Newark facility.</p> <p>9 A. So one thing, I don't know if I'm able</p> <p>10 to ask this question: Is this affidavit one of</p> <p>11 these interviews or is this from a separate</p> <p>12 source?</p> <p>13 MR. MCGAHREN: You can't ask questions.</p> <p>14 He can ask questions of you. You can ask him to</p> <p>15 clarify a question.</p> <p>16 MR. MCDERMOTT: Yes.</p> <p>17 MR. MCGAHREN: Tell him if you don't</p> <p>18 understand a question.</p> <p>19 A. So I'm sorry. The question of "made"</p> <p>20 versus "formulation," can you ask that again.</p> <p>21 Q. Sure.</p> <p>22 The characterization used in the, the</p> <p>23 1998 or 1999 ENSR report of pesticide</p> <p>24 formulation, is that consistent with blending of</p> <p>25 a final product that contains DDT at the Newark</p>	<p style="text-align: right;">Page 96</p> <p>1 the characterization "former insecticide mixing</p> <p>2 operation."</p> <p>3 Do you recall that language in the</p> <p>4 Exhibit 14?</p> <p>5 A. Yes. I see the language.</p> <p>6 Q. Is your understanding of "mixing" the</p> <p>7 same as you just described for "formulating"?</p> <p>8 MR. MCGAHREN: Objection to the form and</p> <p>9 outside the scope of the subjects.</p> <p>10 Q. You can answer.</p> <p>11 A. Yeah. My understanding is exactly as I</p> <p>12 described, that you've got raw materials, it</p> <p>13 appears DDT being one of them, that are mixed or</p> <p>14 formulated to become a finished good. Which I</p> <p>15 think from previous records indicates it's called</p> <p>16 Pestroy.</p> <p>17 MR. MCDERMOTT: How long has it been</p> <p>18 since our last break?</p> <p>19 THE WITNESS: I'm good to keep going.</p> <p>20 MR. MCGAHREN: An hour, something like</p> <p>21 that.</p> <p>22 MS. KROHN: That's correct.</p> <p>23 MR. MCDERMOTT: Why don't we go until</p> <p>24 noon, then maybe we'll talk about what we'll do</p> <p>25 next.</p>
<p style="text-align: right;">Page 95</p> <p>1 plant?</p> <p>2 MR. MCGAHREN: I'm going to object that</p> <p>3 this is outside the scope of the subjects.</p> <p>4 MR. MCDERMOTT: I again disagree, but</p> <p>5 you can answer.</p> <p>6 MR. MCGAHREN: And to the form of the</p> <p>7 question.</p> <p>8 A. My interpretation of formulation is that</p> <p>9 there was a raw -- there were several raw</p> <p>10 materials, and those come together to make a</p> <p>11 finished product, which from the records indicate</p> <p>12 is called Pestroy. And it appears DDT is one of</p> <p>13 those raw materials.</p> <p>14 Q. With respect to Exhibit 14, which is the</p> <p>15 December 1998 memo from Mr. Gustafson.</p> <p>16 A. All right. This is the memo from</p> <p>17 Mr. Gustafson?</p> <p>18 Q. 14.</p> <p>19 A. Okay.</p> <p>20 Q. We'll take a break soon to give you a</p> <p>21 chance to --</p> <p>22 A. That's okay.</p> <p>23 Q. -- get sorted out.</p> <p>24 Do you recall from our discussion, that</p> <p>25 document that -- on page 2, Mr. Gustafson uses</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. MCGAHREN: That's fine.</p> <p>2 BY MR. MCDERMOTT:</p> <p>3 Q. Am I correct that -- well, I think you</p> <p>4 testified earlier that Sherwin-Williams closed</p> <p>5 the Newark plant in 1999?</p> <p>6 A. I know that's when operations ceased. I</p> <p>7 would call that closure.</p> <p>8 Q. I'm marking as Exhibit 15 a document</p> <p>9 that is dated October 2001. And it has Bates</p> <p>10 number 1, Bates number ending 1. It's titled</p> <p>11 ISRA Investigation Report, The Sherwin-Williams</p> <p>12 Newark Facility, Newark, New Jersey.</p> <p>13 (S-W Exhibit 15, ISRA Investigation</p> <p>14 Report, Bates-labeled TSWC-FED-00000001</p> <p>15 - 145, was marked for purposes of</p> <p>16 identification.)</p> <p>17 Q. And I'll give you a chance to look at</p> <p>18 this document. This was marked Exhibit 15, sir.</p> <p>19 And you can let me know if you've seen this one</p> <p>20 before.</p> <p>21 A. So I'm aware of this. I'm not --</p> <p>22 MR. MCGAHREN: There's no question yet,</p> <p>23 John.</p> <p>24 THE WITNESS: I'm sorry.</p> <p>25 Q. Well, the question was: Have you seen</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 this document before?</p> <p>2 A. Yes.</p> <p>3 Q. Did you see it as part of your</p> <p>4 deposition preparation?</p> <p>5 A. Yes.</p> <p>6 Q. And if you could turn to page -- the</p> <p>7 Bates number ends with 11. One, one. And I want</p> <p>8 to direct you to the paragraph beneath the</p> <p>9 section headed Background. And it states: In</p> <p>10 September 1999, Sherwin-Williams ceased</p> <p>11 operations at their Newark, New Jersey, plant,</p> <p>12 and the cessation of operations triggered the</p> <p>13 Industrial Site Recovery Act.</p> <p>14 And it says: Consistent with the</p> <p>15 technical requirements for site remediation, the</p> <p>16 owner or operator must conduct remedial</p> <p>17 activities, including a preliminary assessment</p> <p>18 site investigation and, if necessary, a remedial</p> <p>19 investigation to determine the nature and extent</p> <p>20 of any contaminants that may be present above</p> <p>21 applicable remediation standards. And</p> <p>22 Sherwin-Williams contracted Roy F. Weston to</p> <p>23 perform the required activities.</p> <p>24 Did I read that section accurately?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 100</p> <p>1 states: Based on historical documents and</p> <p>2 interviews with plant personnel, it was</p> <p>3 determined that insecticides were stored in</p> <p>4 former Buildings 20 and 113. And the</p> <p>5 insecticides were finished grade material and</p> <p>6 were stored at these locations prior to off-site</p> <p>7 shipment.</p> <p>8 Did I read those first two sentences</p> <p>9 correctly, sir?</p> <p>10 A. Yes. That's how I read them.</p> <p>11 Q. And the report continues that the</p> <p>12 insecticide material was stored in drums atop the</p> <p>13 concrete pad of the building. And insecticide</p> <p>14 storage repeatedly ceased in the 1960s and the</p> <p>15 buildings were later removed during facility</p> <p>16 modern- -- during the facility modernization</p> <p>17 product -- project in 1966 associated with the</p> <p>18 construction of Building 27.</p> <p>19 Did I read those two sentences</p> <p>20 correctly?</p> <p>21 A. Yes.</p> <p>22 Q. And then, at the end of that paragraph,</p> <p>23 it reads: The area of the former Building 4 is</p> <p>24 approximately 21,060 feet. Based on the historic</p> <p>25 storage in this area, this area was considered to</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. So was it your understanding that this</p> <p>2 report was submitted -- or this report was</p> <p>3 prepared by Weston on behalf of Sherwin-Williams</p> <p>4 as part of site closure activities?</p> <p>5 Is that -- is that a fair</p> <p>6 characterization of the purpose of this document?</p> <p>7 A. Yes.</p> <p>8 Q. And this document was submitted to</p> <p>9 NJDEP?</p> <p>10 A. If the document says it was. I don't</p> <p>11 know.</p> <p>12 Q. Is it fair to say that the document was</p> <p>13 prepared for submission for -- to -- for</p> <p>14 submission to NJDEP as part of the type of</p> <p>15 closure activities they described in that first</p> <p>16 paragraph?</p> <p>17 A. There were a lot of studies. I don't</p> <p>18 know which were prepared for submission to the,</p> <p>19 to the state or not. I'm sorry. I don't know.</p> <p>20 Q. If you would turn to page -- the Bates</p> <p>21 number ends in 109. 109. And do you see the</p> <p>22 section that has the heading AOC 23 Former</p> <p>23 Insecticide Storage Area?</p> <p>24 A. Yes.</p> <p>25 Q. And am I correct that the document</p>	<p style="text-align: right;">Page 101</p> <p>1 be a potential AOC.</p> <p>2 Did I read those two sentences</p> <p>3 correctly?</p> <p>4 A. Yes.</p> <p>5 Q. And is it your understanding that AOC is</p> <p>6 an abbreviation for "area of concern"?</p> <p>7 A. Correct. Yep.</p> <p>8 Q. What historical documents and interviews</p> <p>9 with plant personnel is this report referring to?</p> <p>10 MR. MCGAHREN: I'll object to the form</p> <p>11 of the question.</p> <p>12 Q. You can answer.</p> <p>13 A. I don't know.</p> <p>14 Q. As the corporate designee for</p> <p>15 Sherwin-Williams, do you have an understanding of</p> <p>16 where Weston obtained the information that it</p> <p>17 recites regarding the former insecticide storage</p> <p>18 area in this paragraph?</p> <p>19 A. Only on what this sentence reads:</p> <p>20 Historical documents and interviews.</p> <p>21 Q. If you turn to page 4-61 -- well,</p> <p>22 actually, turn to page 4-60 so we can lay a</p> <p>23 foundation for what that section is discussing.</p> <p>24 And there's a heading on page 4-60</p> <p>25 that -- and the Bates number ends 119 on that</p>

<p style="text-align: right;">Page 102</p> <p>1 page. The heading states: Discussion of</p> <p>2 Surrounding Site Conditions Impacting Groundwater</p> <p>3 At the Sherwin-Williams Site.</p> <p>4 Do you see that section, sir?</p> <p>5 A. Yes.</p> <p>6 Q. And the first paragraph of that section</p> <p>7 states that: Investigative results for the site</p> <p>8 indicated that the site has been impacted by</p> <p>9 off-site sources. Based on this fact, available</p> <p>10 data was reviewed and utilized with the data</p> <p>11 collected during Weston's investigation to</p> <p>12 understand the environmental conditions at the</p> <p>13 site.</p> <p>14 Did I -- did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. Then on the next page, within that same</p> <p>17 section -- and you can take a moment to glance at</p> <p>18 that, at that section, if you'd like.</p> <p>19 But I'm going to direct you to the last</p> <p>20 paragraph that reads: Chlorobenzene and DDT were</p> <p>21 detected in the groundwater at the</p> <p>22 Sherwin-Williams facility.</p> <p>23 Do you see that paragraph?</p> <p>24 A. Yes.</p> <p>25 Q. And the next sentence states: These two</p>	<p style="text-align: right;">Page 104</p> <p>1 believe these, these were raw materials at one</p> <p>2 point in the finished good that was produced in</p> <p>3 Newark.</p> <p>4 Q. And if I could just -- the last thing I</p> <p>5 think with this document -- draw your attention</p> <p>6 to the list of references on the last page. The</p> <p>7 Bates number ends in 145.</p> <p>8 In about the middle of the page, it</p> <p>9 cites to a document that it characterizes as ENSR</p> <p>10 1999 draft summary of site evaluation activities</p> <p>11 for the Sherwin-Williams facility located at 60</p> <p>12 Lister Avenue in Newark, New Jersey.</p> <p>13 Do you see that reference there?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know whether that is the same</p> <p>16 document as we marked as Exhibit 13 which was the</p> <p>17 ENSR report submitted to Mr. Gustafson at</p> <p>18 Sherwin-Williams?</p> <p>19 A. It has the same date and a similar</p> <p>20 title; however -- I mean, the title is slightly</p> <p>21 different, and the date, as you mentioned</p> <p>22 earlier, is different.</p> <p>23 Q. You would agree, sir, that the</p> <p>24 characterization of the former insecticide</p> <p>25 storage area in this document, which to -- if you</p>
<p style="text-align: right;">Page 103</p> <p>1 compounds were never manufactured or utilized at</p> <p>2 the Sherwin-Williams site.</p> <p>3 Did I read that sentence correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Based on the information that we've</p> <p>6 looked at today, you would agree that that is not</p> <p>7 an accurate statement; is that -- is that right?</p> <p>8 A. "Manufactured" is accurate.</p> <p>9 And for the "utilized," as far as those</p> <p>10 being in raw materials, it appears what we've</p> <p>11 covered is different than that.</p> <p>12 Q. So, to the extent this report states</p> <p>13 that DDT was never utilized at the</p> <p>14 Sherwin-Williams site in Newark, that -- you</p> <p>15 agree that statement is not accurate, right?</p> <p>16 A. I'm sorry. Can you repeat that one more</p> <p>17 time.</p> <p>18 Q. Sure.</p> <p>19 The component of this statement here</p> <p>20 that represents the DDT was never utilized at the</p> <p>21 Sherwin-Williams site in Newark, you would agree</p> <p>22 that that part of the statement is not correct?</p> <p>23 A. Yeah. And I don't want to mince words.</p> <p>24 I don't know what "utilized" means. I can</p> <p>25 assume. But based on what we've covered, I</p>	<p style="text-align: right;">Page 105</p> <p>1 want to look back at that, it was page 4-50.</p> <p>2 But that section only references</p> <p>3 insecticide storage; is that right, sir?</p> <p>4 MR. MCGAHREN: Objection to the form.</p> <p>5 A. All right. 4-50, the phrase you're</p> <p>6 referring to again is?</p> <p>7 Q. That paragraph references insecticide</p> <p>8 storage; is that right?</p> <p>9 A. The second sentence indicates stored</p> <p>10 right off-site shipment.</p> <p>11 Q. And do you recall the characterization</p> <p>12 in Exhibit 13 which is the ENSR report that we</p> <p>13 discussed regarding pesticide formulation at the</p> <p>14 Newark plant?</p> <p>15 A. Can you lead me --</p> <p>16 Q. Sure.</p> <p>17 A. -- again to that specific sentence or</p> <p>18 language?</p> <p>19 Q. No problem. It's page 2 of 13. No, I'm</p> <p>20 sorry. It is page 4 of 13.</p> <p>21 MR. MCGAHREN: Let him ask a question,</p> <p>22 John. I'm not sure there was a question pending.</p> <p>23 Q. Yeah. Let me ask a question.</p> <p>24 So that first paragraph in Exhibit 13 --</p> <p>25 I'm sorry. The last sentence of the first</p>

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1 paragraph under Sherwin-Williams' Operation in
2 Exhibit 13, that's -- that states: The
3 pesticides were warehoused on-site and shipped
4 from the Newark plant.
5 Is that -- that's right?
6 A. That is what that reads.
7 MR. MCGAHREN: Objection to form.
8 Q. And I'm correct that what we marked as
9 Exhibit 15, which is the Weston ISRA
10 Investigation Report, also references warehousing
11 and shipping of insecticides; is that right?
12 A. It indicates locations for storage prior
13 to off-site shipment. Yes.
14 Q. Exhibit 13, the ENSR report, also states
15 that interviews indicate that pesticide
16 formulation was conducted at the Newark facility;
17 is that correct?
18 A. The sentence above the one we just spoke
19 to uses that language.
20 Q. And Exhibit 15, the 2001 ISRA
21 Investigation Report, does not reference anywhere
22 in that section pesticide formulation; is that
23 right?
24 MR. MCGAHREN: I'm just going to object
25 to the form.

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1 A. That specific paragraph on 4-50 you're
2 referring to?
3 Q. Uh-huh.
4 A. I'm sorry. Can you repeat the question.
5 Q. Sure.
6 In Exhibit 15, the ISRA Investigation
7 Report, the paragraph under the heading AOC 23 -
8 Former Insecticide Storage Area, does not
9 reference pesticide formulation being conducted
10 at the Newark facility; is that right?
11 A. It doesn't use that language. It uses
12 language "insecticides for finished grade
13 material and were stored prior to shipment."
14 I suppose you could infer what "finished
15 grade material" means, but I don't see the words
16 "made" or "formulated."
17 Q. Staying with Exhibit 15 -- well, let
18 me -- let me ask it this way:
19 Earlier in the deposition -- and you
20 could tell me if I'm -- if I'm characterizing
21 this fairly. You testified that Sherwin-Williams
22 had notified EPA through materials prepared in
23 its site investigation that DDT had been present
24 on the site.
25 Is that -- is that an accurate

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1 recitation of what you -- what you testified
2 earlier?
3 MR. MCGAHREN: Objection to form.
4 A. Can you be more specific? You're
5 referring to post RFI response?
6 Q. Well, at any time. I believe that --
7 you know, when I asked whether E- -- whether
8 Sherwin-Williams had ever informed EPA that its
9 operations involved DDT in any way at the Newark
10 plant, my recollection of your response was that
11 Sherwin-Williams had informed EPA through its
12 site investigation materials of the use of DDT at
13 the site.
14 MR. MCGAHREN: Objection to form.
15 Q. Is that fair?
16 A. There's been complete cooperation with
17 EPA since the initial RFI response. I don't know
18 the specific source that informed the EPA of
19 storage of those materials. But my understanding
20 is that they are aware through this cooperation.
21 Q. So, if I understand correctly, it's your
22 testimony, as the corporate designee of
23 Sherwin-Williams, that you can identify how EPA
24 became aware of the involvement of DDT in
25 Sherwin-Williams' operations at the Newark plant?

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1 MR. MCGAHREN: Objection to the form.
2 Q. You can answer.
3 A. That's correct. I don't know which -- I
4 don't know how that communication was made. I'm
5 informed that that's the case.
6 Q. But it's -- if I understand your
7 testimony correctly, it's your understanding that
8 EPA is aware that DDT was involved in some way in
9 the -- Sherwin-Williams' former operations at its
10 Newark plant; is that right?
11 A. Was it involved in some way? I'm sorry.
12 Can you --
13 Q. Sure.
14 A. -- repeat the question.
15 Q. It's my understanding of your testimony
16 that it's your understanding that EPA has been
17 informed regarding the involvement of DDT in
18 Sherwin-Williams' operations at the Newark plant.
19 MR. MCGAHREN: Objection to form.
20 A. That is my understanding, based on
21 cooperation since the original RFI request.
22 Q. When you say "cooperation," what do you
23 mean specifically?
24 A. Through -- I don't know the exact
25 documents, but my understanding is that they've

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1 been made aware.

2 Q. What's that understanding based on?

3 A. Based on this deposition prep.

4 Q. Did anybody other than counsel provide

5 that information to you?

6 A. There was -- it was primarily through

7 deposition prep from that avenue.

8 Q. Was there any other source of that

9 understanding -- and I'm referring to your

10 understanding that EPA had been informed about

11 DDT at the -- at the Sherwin-Williams Newark

12 plant. Is there any other source of your

13 understanding aside from counsel?

14 In other words, did anybody who isn't

15 one of Sherwin-Williams' lawyers tell you that?

16 A. No.

17 Q. And just in this Exhibit 15, go back to

18 page 4-60 and 4-61, which is the section titled

19 Discussion of Surrounding Site Conditions

20 Impacting Groundwater at the Sherwin-Williams

21 Site.

22 A. I'm sorry. Can you share the --

23 Q. Sure. It's --

24 A. The number of the --

25 Q. -- page 4-60 and page 4-61.

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1 A. Okay.

2 Q. And we discussed this section a few

3 moments ago. And this time, I'd like to draw

4 your attention to the end of page 4-60. And

5 there's a paragraph there that's beneath CLH

6 Superfund Site.

7 Do you see that section?

8 A. Yes.

9 Q. Am I correct that this section in this

10 report is blaming the presence of DDT in site

11 media at the former Sherwin-Williams plant on the

12 neighboring CLH site?

13 MR. MCGAHREN: Objection. Form.

14 A. Can you ask your question one more time.

15 Q. Sure.

16 Am I correct in stating that this

17 section of Exhibit 15 is blaming the presence of

18 DDT in site media at the former Sherwin-Williams

19 plant on the neighboring CLH site?

20 MR. MCGAHREN: Objection to form.

21 Q. Is that a fair characterization?

22 A. I think that's a conclusion one can

23 draw. I think what this reads to me is one

24 manufactured DDT, one did not.

25 Q. And then, at the bottom of 4-60, the

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1 last sentence reads: However, Sherwin-Williams

2 never manufactured or utilized DDT dioxin or

3 chlorobenzene at their facility.

4 Do you see that sentence?

5 A. I do.

6 Q. And like the sentence -- well, do you

7 recall that we looked at a few moments ago the

8 sentence on the following page regarding DDT

9 being utilized at the Sherwin-Williams facility?

10 A. I do remember that.

11 Q. And you would agree that, as the

12 corporate designee of Sherwin-Williams, that the

13 sentence at the bottom of 4-60 stating

14 "Sherwin-Williams never utilized DDT at their

15 facility" is also incorrect?

16 THE REPORTER: "False and incorrect"?

17 MR. MCDERMOTT: I'm sorry. "Also

18 incorrect."

19 THE REPORTER: Thank you.

20 A. I don't know what "utilize" means.

21 MR. MCGAHREN: Objection to form.

22 A. I don't know what "utilize" -- I

23 wouldn't generally agree with your comment

24 because "manufactured," no. "Utilized," I'm not

25 sure what, what that verb means in this report.

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1 And I'm sorry. I don't recall the context of

2 "utilize" from the prior section we just covered

3 in here.

4 Q. If I could refer you back --

5 What time is it?

6 A. A quarter after.

7 Q. Just one last thing and then we'll break

8 for lunch.

9 A. Okay.

10 Q. If I could refer you back to Exhibits 2

11 and 3, which were the 104E request and the

12 response.

13 The -- you know what? We can -- we can

14 skip that. Let me do this instead.

15 I want to mark as Exhibit 16 an

16 August 28th, 2003, letter from NJDEP to Gordon

17 Kuntz at Sherwin-Williams. And the Bates number

18 ends in 2734706.

19 (S-W Exhibit 16, 8-28-03 letter Re:

20 Sherwin-Williams Company ISRA Case No.

21 99382, Bates-labeled OCC-TIG-E02734706 -

22 4743, was marked for purposes of

23 identification.)

24 Q. And if I could just ask, sir, if you've

25 seen this document before.

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1 A. I'm aware of it. I've seen this.

2 Q. And based on DEP's -- well, am I correct

3 that this is a letter from DEP to

4 Sherwin-Williams regarding the ISRA investigation

5 reports that had been submitted by

6 Sherwin-Williams about the Newark plant?

7 A. That's what the header reads. Yes.

8 Q. And it lists as the first bullet an ISRA

9 Investigation Report dated October 26th, 2001.

10 Do you see that?

11 A. Yes.

12 Q. Am I correct that that's the document

13 that we just looked at as Exhibit 15?

14 A. It appears to refer to that document,

15 yes.

16 Q. And then it refers to some other reports

17 that it lists in that bullet sequence at the

18 first, first page; is that right?

19 A. Yes.

20 Q. And if you refer to page 17 of this

21 document. It ends Bates number 2734722. And

22 there's a section with the number 23 and it

23 reads: AOC 23 - Former Insecticide Storage Area.

24 If you can let me know when you find

25 that section, sir.

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1 A. Okay. I'm there.

2 Q. And the first sentence below that

3 section reads: Insecticides were stored within

4 former Buildings 20 and 113 until storage

5 practices ceased in the 1960s. The materials

6 were stored on concrete prior to off-site

7 shipment.

8 Do you see that statement?

9 A. Yes.

10 Q. And then there's a sec- -- there's a

11 couple paragraphs and a section that says NJDEP

12 comments.

13 Do you see that part?

14 A. Yes.

15 Q. And at the bottom of that Comment

16 section, it reads: Sherwin-Williams should

17 supply a list of the insecticides that were

18 stored at this AOC.

19 Do you see that statement, sir?

20 A. Yes.

21 Q. And am I correct that, in this section,

22 DEP is instructing Sherwin-Williams to supply a

23 list of the insecticides that were stored in

24 what's being characterized as AOC 23?

25 A. Yeah. It's kind of soft language. I

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1 don't know if that's a mandate or that's a

2 recommendation. So I don't know without seeing

3 kind of the closing comments. It's just one line

4 in a big document, so I'm not sure what it's

5 requesting or suggesting. Requiring or

6 suggesting.

7 Q. You would agree that, either way, it's

8 requiring or suggesting that -- well, it's

9 stating Sherwin-Williams should supply a list of

10 the insecticides that were stored there?

11 A. That's what this sentence indicates.

12 Q. Okay. I want to mark as Exhibit 17 a

13 document -- a document that has the Bates-stamped

14 49122.

15 (S-W Exhibit 17, Letter Re:

16 Sherwin-Williams ISRA Case No. E99382,

17 Bates-labeled TSWC-FED-00049122 - 9196,

18 was marked for purposes of

19 identification.)

20 Q. If you can take a look at this one, sir,

21 and let me know if you've seen this one before.

22 A. I'm sorry. The cover page looks

23 identical to what we just reviewed in 16. Is

24 this different?

25 Q. Yes. We'll -- so the -- you agree the

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1 DEP letterhead is on this one?

2 A. Correct.

3 Q. And then if you look --

4 THE REPORTER: "Is" or "isn't"?

5 MR. MCDERMOTT: "Is not."

6 Q. If you look, sir, into the document

7 for -- under each section, it has -- am I correct

8 that the language appears to be pasted from the

9 DEP letter? Or let me start that one over.

10 Is it correct that in this document

11 which we've marked as Exhibit --

12 MR. MCDERMOTT: 17?

13 MS. KROHN: Uh-huh.

14 Q. It has the language from DEP's letter,

15 Exhibit 17 -- I'm sorry -- Exhibit 16 copied, and

16 then beneath each section, it has a section with

17 the heading Sherwin-Williams' response.

18 MR. MCGAHREN: Objection to form.

19 A. That appears to be the format.

20 Q. Okay. And if I could just -- while you

21 have that document in front of you, if you could

22 just refer to Exhibit 15, which is the ISRA

23 report from 2001.

24 And the only thing I want to point out

25 there is -- you know, am I correct that the file

<p style="text-align: right;">Page 118</p> <p>1 path printed at the bottom of each page on both</p> <p>2 Exhibit 15 and Exhibit 17 have the same group</p> <p>3 folder?</p> <p>4 A. All right. 15.</p> <p>5 MR. MCGAHREN: I'm going to object to</p> <p>6 the form.</p> <p>7 A. Can you ask your question again, please.</p> <p>8 Q. Sure.</p> <p>9 Both Exhibit 15 and Exhibit 17 have a</p> <p>10 file path printed on the bottom of each page; is</p> <p>11 that correct?</p> <p>12 A. It appears to be in the same parent</p> <p>13 drive.</p> <p>14 Q. Is it fair to conclude that Exhibit 17</p> <p>15 appears to be a draft response to DEP prepared by</p> <p>16 Weston on behalf of Sherwin-Williams?</p> <p>17 MR. MCGAHREN: Objection to the form.</p> <p>18 You're asking him to speculate.</p> <p>19 Q. You can answer.</p> <p>20 A. Yeah. I don't know.</p> <p>21 Q. Okay. Do you know if this document is</p> <p>22 in Sherwin-Williams' files?</p> <p>23 A. I don't know.</p> <p>24 Q. If you could turn to page 34 and 35.</p> <p>25 MR. MCGAHREN: Of which exhibit?</p>	<p style="text-align: right;">Page 120</p> <p>1 section headed with the words Sherwin-Williams'</p> <p>2 Response, it states: The insecticides stored in</p> <p>3 this AOC were DDT and copper arsenate.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. As the corporate designee of</p> <p>7 Sherwin-Williams, do you agree that in -- as of</p> <p>8 2003, Sherwin-Williams or someone acting on</p> <p>9 Sherwin-Williams' behalf was aware that DDT was</p> <p>10 present as part of the site operations at the</p> <p>11 Sherwin-Williams Newark plant?</p> <p>12 MR. MCGAHREN: Objection to the form.</p> <p>13 You're asking him to speculate again.</p> <p>14 A. Yeah, I don't see any clarifications</p> <p>15 with that sentence, like as far as when, where.</p> <p>16 I know it refers to the Newark site, but there's</p> <p>17 no details along with that last sentence.</p> <p>18 Q. But the fact that DDT was stored at the</p> <p>19 Sherwin-Williams Newark plant is specifically</p> <p>20 referenced in this statement in Exhibit 17,</p> <p>21 right?</p> <p>22 A. Yeah. Without a time frame, the phrase</p> <p>23 states that it was stored at Newark.</p> <p>24 Q. Do you know if this document was ever</p> <p>25 submitted to NJDEP?</p>
<p style="text-align: right;">Page 119</p> <p>1 MR. MCDERMOTT: I'm sorry. Good point.</p> <p>2 Exhibit 17.</p> <p>3 Q. And there is a -- that same section we</p> <p>4 just looked at in the DEP letter, Exhibit 16,</p> <p>5 starts on page 34 of Exhibit 17.</p> <p>6 A. Can you state which files you're</p> <p>7 referring to one more time?</p> <p>8 Q. Yes. It was confusing.</p> <p>9 A. I'm on page 34 in Exhibit 17.</p> <p>10 Q. This way might be easiest.</p> <p>11 If I could direct you to page 34 of</p> <p>12 Exhibit 17.</p> <p>13 A. Okay.</p> <p>14 Q. Do you see the section that says --</p> <p>15 Section 23, AOC 23 - Former Insecticide Storage</p> <p>16 Area?</p> <p>17 A. Yes.</p> <p>18 Q. And then continuing on to the next page,</p> <p>19 at the bottom, right after the first paragraph on</p> <p>20 page 35, it copies the same sentence we just</p> <p>21 looked at that says: Sherwin-Williams should</p> <p>22 supply a list of the insecticides that were</p> <p>23 stored at this AOC; is that fair?</p> <p>24 A. I see that sentence.</p> <p>25 Q. And then beneath -- at the end of the</p>	<p style="text-align: right;">Page 121</p> <p>1 MR. MCGAHREN: Objection to the form.</p> <p>2 A. I don't.</p> <p>3 Q. Do you know what the statement "the</p> <p>4 insecticide stored at this AOC where DDT and</p> <p>5 copper arsenate" was based on?</p> <p>6 A. I don't know what information it's based</p> <p>7 on.</p> <p>8 Q. Is it correct that, as the corporate</p> <p>9 designee of Sherwin-Williams, you're not aware of</p> <p>10 any written supplement to EPA regarding its 1995</p> <p>11 Request For Information that references DDT in</p> <p>12 any way at the Newark plant?</p> <p>13 A. I'm not aware of a written supplement.</p> <p>14 If there was one provided, I don't know that.</p> <p>15 Q. And, to be clear, you're not aware of</p> <p>16 any oral communication, any specific oral</p> <p>17 communication to EPA identifying DDT as part of</p> <p>18 Newark -- as part of Sherwin-Williams' operations</p> <p>19 at the former Newark plant?</p> <p>20 A. So, first, I'm not aware of the written</p> <p>21 supplement to the RFI. As far as oral</p> <p>22 communication, I don't know. I don't have</p> <p>23 information around oral communication of that.</p> <p>24 MR. MCDERMOTT: Break for lunch?</p> <p>25 MR. MCGAHREN: Sure.</p>

<p style="text-align: right;">Page 122</p> <p>1 VIDEOGRAPHER: Off the record, 12:30. 2 (A luncheon recess was taken.) 3 AFTERNOON SESSION 4 VIDEOGRAPHER: On the record, 1:56. 5 BY MR. MCDERMOTT: 6 Q. Mr. Vosicky, I wanted to mark as 7 Exhibits 18 and 19 two letters. 8 (S-W Exhibit 18, 10-28-21 letter Re: 9 Occidental Chemical Corp. V. 21st 10 Century Fox Am., Inc., et al., was 11 marked for purposes of identification.) 12 (S-W Exhibit 19, 11-16-21 letter Re: 13 Occidental Chemical Corp. V. 21st 14 Century Fox Am., Inc., et al., was 15 marked for purposes of identification.) 16 MR. MCGAHREN: Thanks. 17 Q. And I don't intend to ask about the 18 first one, but I'm marking it because the second 19 one is responding to it. 20 And, with respect to Exhibit 19, am I 21 correct that this is a letter from Bart Bennett 22 with respect to Sherwin-Williams and the 23 litigation OxyChem has filed? 24 A. Yes. 25 Q. And I believe -- am I correct that</p>	<p style="text-align: right;">Page 124</p> <p>1 provided to plaintiff, the company has asserted 2 that insecticides were located at the site for 3 storage purposes only and that no formulation or 4 manufacturer of insecticides occurred at the 5 site. 6 Do you see that sentence? 7 A. I do. 8 Q. And consistent with your testimony 9 earlier, as the corporate representative of 10 Sherwin-Williams, am I correct that that 11 statement is not correct? 12 MR. MCGAHREN: Objection to the form. 13 A. I think it gets back into the verb 14 usage. So mixing verse "formulation" verse 15 "manufacturing," I think we've seen it used in 16 different terms. 17 Q. Let me rephrase, then, or ask it this 18 way: 19 As it pertains to insecticide 20 formulation, the statement in this letter is not 21 accurate; is that fair to say? 22 MR. MCGAHREN: Object to the form of the 23 question. Define "formulation." He's not an 24 expert in formulation of pesticides. 25 A. I think what we've seen is that DDT was</p>
<p style="text-align: right;">Page 123</p> <p>1 Mr. Bennett was one of the attorneys you 2 identified as having participated in the 3 deposition preparation that you engaged in? 4 Is that right? 5 A. That's correct. 6 Q. And if you could just turn to page -- 7 the second page of Mr. Bennett's letter. I just 8 want to confirm, in the first full paragraph, the 9 second sentence states: That investigation and 10 the associated reports provides demonstrative 11 proof whether any operations at the site involved 12 DDT. 13 Do you see that, that sentence? 14 A. I do. 15 Q. Then later on in that same letter, on 16 page 4, there's a section under the heading 17 Pesticide Manufacturer. 18 A. Can you guide me again -- 19 Q. Sure. 20 A. -- to where... 21 Q. Page 4 of the letter. 22 A. Okay. 23 Q. There's a heading Pesticide 24 Manufacturing. And the second sentence in that 25 section reads: In the discovery responses</p>	<p style="text-align: right;">Page 125</p> <p>1 a raw material. The records indicate that it was 2 a raw material used to make Pestroy. 3 So whether you use the word "make," 4 "formulate," "manufacture," "mix" -- I would use 5 the word "mix" because it's raw material to make 6 a final product. 7 Q. You would agree that any of those terms, 8 any of those verbs indicate the presence of and 9 the handling of DDT at the site, right? 10 MR. MCGAHREN: Objection to the form. 11 Q. You can answer. 12 A. We've seen records that DDT was on-site 13 and that the finished -- it went in the finished 14 product Pestroy. 15 Q. And if you could just turn to the first 16 page of that letter. That's dated November 16, 17 2021. 18 Do you see that? 19 A. Yes. 20 Q. I'm going to mark Exhibit 20 a letter 21 dated March 31st, 2016, from EPA. 22 (S-W Exhibit 20, 3-31-2016 letter Re: 23 Diamond Alkali Superfund Site, was 24 marked for purposes of identification.) 25 MR. MCGAHREN: This is 20?</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. MCDERMOTT: I believe -- yes.</p> <p>2 MR. MCGAHREN: Thank you.</p> <p>3 Q. Take a look at that document and let me</p> <p>4 know if you've seen that before.</p> <p>5 A. If I have seen this, I don't recall.</p> <p>6 Q. If you could turn to page 17 of the -- I</p> <p>7 believe the numbered pages begin on the address</p> <p>8 list. I'm sorry. Page 18 of the address list.</p> <p>9 Do you see the Sherwin-Williams Company</p> <p>10 listed on that page as a recipient of this</p> <p>11 letter? Is that right?</p> <p>12 A. I do.</p> <p>13 Q. And the recipients for Sherwin-Williams</p> <p>14 are listed as Donald McConnell and Bart Bennett.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. And that's the same Donald McConnell,</p> <p>18 Donald McConnell that submitted the 1995 104E</p> <p>19 response to EPA?</p> <p>20 A. I believe so.</p> <p>21 Q. Earlier, before lunch, you testified</p> <p>22 that, that it was your understanding that EPA was</p> <p>23 informed about the presence of DDT at the site</p> <p>24 during site operations in the context of</p> <p>25 cooperation between Sherwin-Williams and EPA.</p>	<p style="text-align: right;">Page 128</p> <p>1 1984. Prior to 1984, this facility manufactures</p> <p>2 resins, varnish, oil- and water-based latex</p> <p>3 paint.</p> <p>4 Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. As the corporate representative for</p> <p>7 Sherwin-Williams, do you agree that</p> <p>8 Sherwin-Williams' March 2nd, 1995, response does</p> <p>9 not provide a complete answer to Request Number</p> <p>10 4?</p> <p>11 MR. MCGAHREN: Objection. Calls for a</p> <p>12 legal conclusion.</p> <p>13 A. No. I think the answer to Number 4</p> <p>14 indicates that our finished products are not</p> <p>15 considered hazardous substances. That's similar</p> <p>16 to the discussion we had about the Request For</p> <p>17 Information Number 3 at the time the information</p> <p>18 that the raw materials did not contain any of</p> <p>19 these items listed in the CSE.</p> <p>20 Q. So is it your testimony as the corporate</p> <p>21 representative for Sherwin-Williams that, during</p> <p>22 the operate -- entire operation of the</p> <p>23 Sherwin-Williams Newark plant, no manufacturing</p> <p>24 process resulted in a hazardous substance as a</p> <p>25 product or byproduct?</p>
<p style="text-align: right;">Page 127</p> <p>1 Do you recall that testimony?</p> <p>2 A. I do.</p> <p>3 Q. Do you know if that communication</p> <p>4 happened between EPA and either Don McConnell or</p> <p>5 Bart Bennett?</p> <p>6 A. No. I don't know the details of the</p> <p>7 timing or the -- or the members.</p> <p>8 Q. If I could refer you, Mr. Vosicky, back</p> <p>9 to Exhibits 2 and 3, the 104E request and the</p> <p>10 104E response.</p> <p>11 If you turn to page 4 which is on page 2</p> <p>12 of Exhibit 2, the 104E request, there is a --</p> <p>13 well, am I correct that request 4 states in</p> <p>14 subpart A: Provide a description of the</p> <p>15 manufacturing processes for which all hazardous</p> <p>16 substances including but not limited to the</p> <p>17 substances listed in response to item 3 were a</p> <p>18 product or a byproduct.</p> <p>19 Did I read that correctly, sir?</p> <p>20 A. Yes.</p> <p>21 Q. And the response on Exhibit 3 to</p> <p>22 question 4A is the Lister Avenue facility has not</p> <p>23 manufactured any products that contain any of the</p> <p>24 hazardous substances listed in question 3. This</p> <p>25 facility produced a water-based latex paint since</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Our finished goods we don't consider as</p> <p>2 hazardous substances, per se. The raw materials</p> <p>3 and ingredients to produce those may have</p> <p>4 contained some of those materials.</p> <p>5 Q. And what about any product or byproduct</p> <p>6 of the manufacturing process during</p> <p>7 Sherwin-Williams' operation of its Newark plant?</p> <p>8 Did any product or byproduct resulting from such</p> <p>9 a manufacturing process include or contain a</p> <p>10 hazardous substance?</p> <p>11 MR. MCGAHREN: Objection to the form of</p> <p>12 the question. Mischaracterizes the EPA request.</p> <p>13 Q. You can answer.</p> <p>14 A. Can you ask that again, please.</p> <p>15 Q. Sure.</p> <p>16 Let me ask it this way: Request 4</p> <p>17 instructs Sherwin-Williams to provide a</p> <p>18 description of the manufacturing processes for</p> <p>19 which all hazardous substances were a byproduct</p> <p>20 [sic] or byproduct?</p> <p>21 MR. MCGAHREN: Objection to the form.</p> <p>22 Q. We agree on that, right? That EPA --</p> <p>23 that's what EPA's asking for, at least in part?</p> <p>24 A. That is what the question reads.</p> <p>25 MR. MCGAHREN: Objection to form.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q. And Sherwin-Williams' response states</p> <p>2 only that the facility has not manufactured any</p> <p>3 products that contain any of the hazardous</p> <p>4 substance listed in question 3; is that right?</p> <p>5 A. So I think the -- for question 4, what's</p> <p>6 being asked, none of the materials in question 3</p> <p>7 are a product or byproduct of what we</p> <p>8 manufacture.</p> <p>9 So those were -- some of those may have</p> <p>10 been in the raw materials to produce our products</p> <p>11 or byproducts which are resins, varnish, oil-</p> <p>12 and water-based latex paint.</p> <p>13 Q. You would agree that EPA in its Request</p> <p>14 4A does not limit its request only to the</p> <p>15 substances listed in response to Request 3?</p> <p>16 MR. MCGAHREN: Objection to form.</p> <p>17 Q. But it includes all other hazardous</p> <p>18 substances; is that right?</p> <p>19 A. Hazardous substances to what definition?</p> <p>20 Excuse me.</p> <p>21 Q. If you turn to page 1 of Exhibit 2, the</p> <p>22 second full paragraph, do you see where it says:</p> <p>23 EPA requests information concerning the nature</p> <p>24 and quantity of certain materials?</p> <p>25 A. I'm sorry. One from which exhibit?</p>	<p style="text-align: right;">Page 132</p> <p>1 limited its response to the hazardous substances</p> <p>2 listed in Request Number 3?</p> <p>3 MR. MCGAHREN: Objection to form.</p> <p>4 A. Yeah, I don't know what scope he's</p> <p>5 answering this, or this was answered in, in 1995.</p> <p>6 Q. Well, do you agree that he specifically</p> <p>7 says "has not manufactured any products that</p> <p>8 contain any of the hazardous substance listed in</p> <p>9 question 3"?</p> <p>10 He specifically limits it to those</p> <p>11 hazardous substances in question 3; isn't that</p> <p>12 right?</p> <p>13 A. That is how it reads.</p> <p>14 Q. Are you aware of any analysis performed</p> <p>15 by Sherwin-Williams of the -- well, let me lay a</p> <p>16 foundation.</p> <p>17 Are you familiar with PCBs?</p> <p>18 A. I'm aware of PCBs, yes.</p> <p>19 Q. As the corporate representative of</p> <p>20 Sherwin-Williams, are you aware of any analyses</p> <p>21 done by or on behalf of the company regarding the</p> <p>22 presence of PCBs in paints?</p> <p>23 A. Personally, no.</p> <p>24 Q. I marked as Exhibit 21 a published paper</p> <p>25 titled Inadvertent Polychlorinated Biphenyls in</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Exhibit 2.</p> <p>2 A. Exhibit 2.</p> <p>3 Q. The 104E request.</p> <p>4 A. Okay.</p> <p>5 Q. The middle paragraph, do you see the</p> <p>6 part where it says: In this Request For</p> <p>7 Information, EPA requests information concerning</p> <p>8 the nature and quantity of certain materials.</p> <p>9 And then, in parentheses, it says:</p> <p>10 Hazardous substances and hazardous waste, as</p> <p>11 those terms are defined at Section 101(14) of</p> <p>12 CERCLA and Section 1004 of RCRA, does that answer</p> <p>13 your question as to how --</p> <p>14 A. Yes.</p> <p>15 Q. -- EPA defines "hazardous substance"?</p> <p>16 So just returning back to Number 4,</p> <p>17 Request 4, you would agree that EPA is not</p> <p>18 limiting in that request its inquiry to only the</p> <p>19 substances listed in Request Number 3 but</p> <p>20 inquires about all hazardous substances; is that</p> <p>21 right?</p> <p>22 A. "A product or byproduct."</p> <p>23 Yes, it would include all hazardous</p> <p>24 substances, to your point.</p> <p>25 Q. Am I correct that Sherwin-Williams only</p>	<p style="text-align: right;">Page 133</p> <p>1 Commercial Paint Pigments.</p> <p>2 (S-W Exhibit 21, Inadvertent</p> <p>3 Polychlorinated Biphenyls in Commercial</p> <p>4 Plant Pigments article, Bates-labeled</p> <p>5 OCC-TIG-E02729886 - 9891, was marked for</p> <p>6 purposes of identification.)</p> <p>7 Q. Now, if you could just take a look at</p> <p>8 that paper and let me know if you've seen it</p> <p>9 before, sir.</p> <p>10 MR. MCGAHREN: I'm going to object to</p> <p>11 the questions being outside the scope of the</p> <p>12 subjects that were asked for this deposition.</p> <p>13 MR. MCDERMOTT: Again, I disagree, but</p> <p>14 your objection is noted.</p> <p>15 Q. So the question, sir, was: Have you</p> <p>16 seen the paper that's been marked as Exhibit 21</p> <p>17 before?</p> <p>18 A. I have not. Excuse me.</p> <p>19 Q. If you look at Table 1 which is on the</p> <p>20 third page of the paper. And that -- am I</p> <p>21 correct that table is titled Colors and Types of</p> <p>22 Commercial Paint Pigments Purchased From Three</p> <p>23 Paint Stores?</p> <p>24 A. That is the title.</p> <p>25 Q. And it lists Sherwin-Williams as one of</p>

<p style="text-align: right;">Page 134</p> <p>1 those three paint stores; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And then it has a column that lists</p> <p>4 several colors and then a third column that lists</p> <p>5 pigment type.</p> <p>6 Do you see those columns?</p> <p>7 A. I do.</p> <p>8 Q. And if you turn to the table that's</p> <p>9 appended to the published paper, which is the</p> <p>10 last few pages of the document. And I'm</p> <p>11 specifically referring to page 2 of those tables</p> <p>12 which reads: Table S1, Detected PCB congeners in</p> <p>13 paint pigments purchased from Sherwin-Williams.</p> <p>14 Do you see that table, sir?</p> <p>15 A. Yes.</p> <p>16 Q. And it's expressing concentration in</p> <p>17 units of ng/g.</p> <p>18 Do you have an understanding of -- well,</p> <p>19 strike that.</p> <p>20 Am I correct that this table is listing</p> <p>21 the results of P -- of sampling of paint pigments</p> <p>22 purchased from Sherwin-Williams and listing</p> <p>23 concentrations of PCB congeners in those?</p> <p>24 MR. MCGAHREN: Objection to form.</p> <p>25 A. Is it -- it appears to be a fraction of</p>	<p style="text-align: right;">Page 136</p> <p>1 A. Yes.</p> <p>2 Q. And then the table indicates PCB</p> <p>3 concentrations detected in the paints sampled by</p> <p>4 the researchers authoring this paper.</p> <p>5 Is that -- is that what that appears to</p> <p>6 be?</p> <p>7 A. Which table?</p> <p>8 MR. MCGAHREN: Objection to form.</p> <p>9 A. Which table are you referring to?</p> <p>10 Q. The top graph in Figure 1. I apologize</p> <p>11 if I said "table" again.</p> <p>12 A. So I'm sorry. Your question again was?</p> <p>13 Q. Was: Does this figure appear to be</p> <p>14 showing in graph form the total concentrations of</p> <p>15 PCBs detected in certain paint pigments sampled,</p> <p>16 including in the top graph those purchased from</p> <p>17 Sherwin-Williams?</p> <p>18 MR. MCGAHREN: Objection to the form.</p> <p>19 Same objection on the scope.</p> <p>20 A. The title of the figure indicates what</p> <p>21 you've just said.</p> <p>22 Q. If you look just before in the column</p> <p>23 opposite from the Figure 1 that we just looked</p> <p>24 at, at the bottom of that column preceding Figure</p> <p>25 1 -- well, there's a section called Results and</p>
<p style="text-align: right;">Page 135</p> <p>1 mass -- the total mass of PCB congeners.</p> <p>2 Q. If I could refer you to Figure 1 on the</p> <p>3 paper which is toward the front of the document.</p> <p>4 A. I'm sorry. Which one am I looking at?</p> <p>5 Q. It's the second page of the paper.</p> <p>6 A. Okay.</p> <p>7 Q. And it's Table 1 and it's titled -- I'm</p> <p>8 sorry. Figure 1.</p> <p>9 It's titled PCB Concentrations in 33</p> <p>10 Commercial Paint Pigments Purchased From</p> <p>11 Sherwin-Williams, PPG Pittsburgh, and Vogel paint</p> <p>12 stores.</p> <p>13 Do you see that table, sir, or that</p> <p>14 figure?</p> <p>15 A. I do.</p> <p>16 Q. And the top graph within that figure</p> <p>17 has -- is labeled Sherwin-Williams.</p> <p>18 Do you see that, sir?</p> <p>19 MR. MCGAHREN: I'm going to object to</p> <p>20 this entire line of questioning as outside the</p> <p>21 scope of the subjects in this deposition.</p> <p>22 Q. You can answer.</p> <p>23 A. Yes, I see that.</p> <p>24 Q. And the y-axis is labeled Total</p> <p>25 Concentration; is that right?</p>	<p style="text-align: right;">Page 137</p> <p>1 Discussion.</p> <p>2 Do you see that in the middle?</p> <p>3 A. Yes.</p> <p>4 Q. And in the bottom paragraph, there's a</p> <p>5 sentence that starts: For pigment samples from</p> <p>6 Sherwin-Williams, we clearly see PCBs are only</p> <p>7 present in these two types of pigments.</p> <p>8 And it's referring to azo pigments and</p> <p>9 phthalocyanine pigments?</p> <p>10 Is that a fair characterization of what</p> <p>11 those couple sentences say?</p> <p>12 MR. MCGAHREN: Objection to form and</p> <p>13 scope.</p> <p>14 A. I've not read this. It looks like it's</p> <p>15 a continuation after they reference PPG</p> <p>16 Pittsburgh and Vogel. I don't know if that's a</p> <p>17 general statement or referring to one of the</p> <p>18 paint types.</p> <p>19 Q. As the corporate representative of</p> <p>20 Sherwin-Williams, is it your understanding that</p> <p>21 paints formulated with raw materials that include</p> <p>22 phthalocyanine were manufactured at the Newark</p> <p>23 plant?</p> <p>24 A. I don't know the answer to that.</p> <p>25 Q. And same question for the a- -- I'm</p>

<p style="text-align: right;">Page 138</p> <p>1 pronouncing it a-zo.</p> <p>2 As the corporate representative of</p> <p>3 Sherwin-Williams, is it your understanding that</p> <p>4 paints manufactured with azo pigments were</p> <p>5 produced at the Sherwin-Williams Newark plant?</p> <p>6 A. I don't know.</p> <p>7 Q. I'm going to mark as Exhibit 22 a</p> <p>8 document that is dated November 9th, 1960. It's</p> <p>9 a Raw Material Consumption Report. The Bates</p> <p>10 number ends in 9534.</p> <p>11 (S-W Exhibit 22, Raw Material</p> <p>12 Consumption Report, Bates-labeled</p> <p>13 TSWC-FED-00095340 - 5556, was marked for</p> <p>14 purposes of identification.)</p> <p>15</p> <p>16 If you could take a look at that</p> <p>17 document, sir, and let me know if you've seen</p> <p>18 that one before.</p> <p>19 And I'll represent that that is an</p> <p>20 excerpted version of that document. I have the</p> <p>21 full version here.</p> <p>22 A. I don't recall seeing this.</p> <p>23 Q. You would agree that this document</p> <p>24 indicates that it is a raw material consumption</p> <p>25 report for what appears to be September 1st,</p>	<p style="text-align: right;">Page 140</p> <p>1 A. I don't know.</p> <p>2 Q. You would agree that the entry for</p> <p>3 Aroclor 1254 lists the Newark plant during the</p> <p>4 period of time being covered by this Raw Material</p> <p>5 Consumption Report as having used 2,100 pounds of</p> <p>6 Aroclor 1254?</p> <p>7 Is that a fair characterization?</p> <p>8 MR. MCGAHREN: Objection to the form.</p> <p>9 Q. You can answer.</p> <p>10 A. I -- this is one entry for this entire</p> <p>11 document. Based on the title of the report -- I</p> <p>12 don't know if there's additional entries related</p> <p>13 to Newark. I'm not sure the preceding pages, if</p> <p>14 this shows the scope of time.</p> <p>15 So without seeing and understanding the</p> <p>16 entire document, I couldn't jump to that</p> <p>17 conclusion at this moment.</p> <p>18 Q. In the course of preparing for the</p> <p>19 deposition, did you review any documents titled</p> <p>20 Raw Material Consumption Report that looked</p> <p>21 similar in form and content of the exhibit that</p> <p>22 we're looking at right now?</p> <p>23 A. No. I don't recall reviewing any Raw</p> <p>24 Material Consumption Reports.</p> <p>25 Q. Why don't I just go ahead and mark as</p>
<p style="text-align: right;">Page 139</p> <p>1 1959, through August 31st, 1960? Is that what</p> <p>2 the cover page shows?</p> <p>3 A. That's what the title says.</p> <p>4 Q. If you could turn to the page that ends</p> <p>5 in Bates number 95482, which is about a little</p> <p>6 more than halfway through the document. This is</p> <p>7 going to be a little bit different than what we</p> <p>8 were just discussing in that paper.</p> <p>9 A. Okay.</p> <p>10 Q. Feel free to look at the exhibits, but I</p> <p>11 don't want to --</p> <p>12 A. Okay.</p> <p>13 Q. I don't want to waste your time.</p> <p>14 What I want to just point you to in this</p> <p>15 document that's Exhibit 22, in the middle of that</p> <p>16 page that ends Bates number ending 95482, do you</p> <p>17 see the entry that says "Aroclor 1254"?</p> <p>18 A. I do.</p> <p>19 Q. Are you familiar with what an Aroclor</p> <p>20 is?</p> <p>21 A. I'm not.</p> <p>22 Q. Is it your understanding, as the</p> <p>23 corporate representative of Sherwin-Williams,</p> <p>24 that an Aroclor is a -- well, Aroclor 1254 is a</p> <p>25 PCB-containing product marketed by Monsanto?</p>	<p style="text-align: right;">Page 141</p> <p>1 Exhibit 23 the full -- the full version of</p> <p>2 this -- of this document. It has the same Bates</p> <p>3 number as Exhibit 22 except it is not excerpted.</p> <p>4 And I don't have a copy of that because</p> <p>5 of volume, but just for completeness.</p> <p>6 (S-W Exhibit 23, Raw Material</p> <p>7 Consumption Report, Bates-labeled</p> <p>8 TSWC-FED-00095340 - 5649, was marked for</p> <p>9 purposes of identification.)</p> <p>10 MR. MCGAHREN: Are we marking that one?</p> <p>11 Did you mark it yet?</p> <p>12 MR. MCDERMOTT: I marked it as a</p> <p>13 separate exhibit --</p> <p>14 MR. MCGAHREN: What is it, 23?</p> <p>15 MR. MCDERMOTT: -- just so the record's</p> <p>16 clean.</p> <p>17 BY MR. MCDERMOTT:</p> <p>18 Q. And based on the brief review you've</p> <p>19 been able to do on that document right now, is it</p> <p>20 correct that this Raw Material Consumption Report</p> <p>21 lists various raw materials in the quantities</p> <p>22 used for a specified period of time at various</p> <p>23 Sherwin-Williams plants?</p> <p>24 Is that correct?</p> <p>25 MR. MCGAHREN: Objection to the form.</p>

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1 A. So that appears to be the information
2 included.
3 Q. And after you've had a chance to flip
4 through that one, you know, just ask -- well, let
5 me ask it this way:
6 As the corporate designee of
7 Sherwin-Williams, the entry listing -- well,
8 after you've had a chance to flip through that
9 complete version, you can turn back to the page
10 that ends with Bates number 95482 in either
11 version of the document.
12 A. Okay.
13 Q. And, as the corporate representative of
14 Sherwin-Williams, does Sherwin-Williams have any
15 information to indicate that the Newark plant did
16 not consume 2,100 pounds of Aroclor 1254 during
17 the time period covered by this raw material
18 consumption report?
19 MR. MCGAHREN: Objection to the form.
20 A. There's no document I've seen that's
21 counter to this.
22 Q. Based on your review of the records from
23 the Newark plant, are you aware of any
24 information -- well, let me ask that a different
25 way.

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1 As the corporate designee of
2 Sherwin-Williams, how were -- how was Aroclor
3 1254 being used at the Newark plant?
4 MR. MCGAHREN: Objection to the form of
5 the question.
6 A. Yeah. I don't know.
7 Q. I'm going to mark as Exhibit 24 a
8 document that has the title US EPA Region 4
9 Technical Services Section Issue Paper For
10 Polychlorinated Biphenyl Characterization at
11 Region 4 Superfund and RCRA Sites.
12 I'll hand that to you, sir. That's
13 Exhibit 24.
14 (S-W Exhibit 24, Technical Services
15 Section Issue issued 2-28-13, was marked
16 for purposes of identification.)
17 Q. And I'd ask you, sir, have you seen the
18 document that's been marked as Exhibit 24 before?
19 A. I have not.
20 Q. I just want to refer you to page 18 of
21 that document. And there are some tables --
22 MR. MCGAHREN: Which page? I'm sorry?
23 MR. MCDERMOTT: Page 18.
24 MR. MCGAHREN: Okay.
25 Q. I guess one foundational question before

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1 I get to that:
2 You would agree that this document
3 appears to be a US EPA Region 4 publication?
4 A. On the front page, it indicates it is.
5 Q. And then back to page 18. There's a
6 table at the top right-hand corner of the page
7 that has two columns. One says Operation, the
8 other says Aroclor Used.
9 And in that table, do you see the third
10 entry down which says "oil-based paint and caulk"
11 as the operation, and Aroclor Used lists Aroclor
12 1242 and 1254?
13 Do you see that, where the document says
14 that, sir?
15 A. I do.
16 Q. At various points in Sherwin-Williams'
17 operation of its Newark plant, was it making
18 oil-based paint?
19 A. Yes.
20 Q. And further down in that same column,
21 the second-to-last entry reads: Floor finish and
22 the Aroclor Used column of that entry reads:
23 Aroclor 1254, 1260, and 1262.
24 Do you see that row?
25 A. I'm sorry. You said "Floor Used"?

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1 Q. "Floor finish."
2 A. Which -- so there's Table 2. There's
3 four table -- five tables. Which table are you
4 referring to?
5 Q. Right.
6 So going consecutively, Table 2, there's
7 the table in the bottom left-hand side.
8 A. Okay.
9 Q. The one I'm reading from is the next one
10 which is at the top of the next column on the
11 page.
12 A. Okay.
13 Q. And then, you know, there was the entry
14 which we just went over, which is the third one
15 down. Am I correct that that reads "oil-based
16 paint and caulk" in the Aroclor Used for that,
17 and the entry reads Aroclor 1242 and 1254?
18 A. Yes.
19 Q. And then several entries down, it reads:
20 Floor finish, and indicates Aroclor Used 1254,
21 1260, and 1262.
22 A. Yes.
23 Q. Do you see that?
24 At various points in the operation of
25 Sherwin-Williams' Newark plant, was it producing

<p style="text-align: right;">Page 146</p> <p>1 floor finish at the plant?</p> <p>2 A. I've not specifically seen floor</p> <p>3 finishes in the documents that I've reviewed</p> <p>4 related to Newark.</p> <p>5 Q. Sir, in the process of preparing for</p> <p>6 this deposition, did you review any of the</p> <p>7 sampling data that was collected as part of the</p> <p>8 site remediation performed by Sherwin-Williams'</p> <p>9 consultant?</p> <p>10 A. Yes.</p> <p>11 Q. Are you familiar with the detections of</p> <p>12 PCB congeners at various locations in site media</p> <p>13 at the former Sherwin-Williams plant?</p> <p>14 A. In some of those studies, I recall</p> <p>15 seeing that samples were taken with conclusions</p> <p>16 derived of where they were from. I don't</p> <p>17 remember the word "PCG congeners." [Sic]</p> <p>18 MS. KROHN: So we have a document that</p> <p>19 we need to use Exhibit Share for to show</p> <p>20 everybody.</p> <p>21 Could we go off the record for a second?</p> <p>22 MR. MCDERMOTT: Yes. Let's go off the</p> <p>23 record for one second.</p> <p>24 VIDEOGRAPHER: Off the record, 2:39.</p> <p>25 (Discussion off the record.)</p>	<p style="text-align: right;">Page 148</p> <p>1 the record, the title, the first page Bates</p> <p>2 number of the document.</p> <p>3 But just in general -- and I think the</p> <p>4 answer is "no" because you said you hadn't looked</p> <p>5 at any Raw Material Consumption Reports.</p> <p>6 But just to give you a chance to</p> <p>7 confirm, have you seen this document before?</p> <p>8 A. I have not seen this document.</p> <p>9 Q. If I could direct your -- well, direct</p> <p>10 your attention to what is the second page of this</p> <p>11 exhibit, the title page. And would you agree</p> <p>12 that it indicates that it is a Raw Material</p> <p>13 Consumption Report and it purports to cover the</p> <p>14 period September 1st, 1960, through August 31st,</p> <p>15 1961?</p> <p>16 Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And then if you could turn to page --</p> <p>19 the page that ends with Bates number 107306.</p> <p>20 And if you could -- if I could direct</p> <p>21 your attention to the middle of that page. PC</p> <p>22 has another entry for Aroclor 1254. And within</p> <p>23 that -- within that entry, would you agree that</p> <p>24 it indicates the Newark plant consumed 945 pounds</p> <p>25 of Aroclor 1254 during the time period covered by</p>
<p style="text-align: right;">Page 147</p> <p>1 VIDEOGRAPHER: On the record, 2:40.</p> <p>2 BY MR. MCDERMOTT:</p> <p>3 Q. I'm going to mark as Exhibit 25 a</p> <p>4 document.</p> <p>5 (S-W Exhibit 25, Raw Material</p> <p>6 Consumption Report, Bates-labeled</p> <p>7 TSWC-FED-00107172 - 7173, 7201, 7204 -</p> <p>8 7206, 7208, 7245, 7306, 7323-7324, 7342,</p> <p>9 7353 - 7354, 7379, 7383, 7386, 7423,</p> <p>10 7447, 7449, 7493, 7495, 7499, 7501,</p> <p>11 7607, 7625, 7627, 7647, 7679, 7684,</p> <p>12 7689, 7692, 7730, 7754, 7756, and 7758,</p> <p>13 was marked for purposes of</p> <p>14 identification.)</p> <p>15 MR. MCGAHREN: Thank you.</p> <p>16 Q. That has in what appears to be a box</p> <p>17 labeled -- scanned on the front, but on the</p> <p>18 second page is another Raw Material Consumption</p> <p>19 Report title page. The Bates number of the first</p> <p>20 page of the document, for the record, is 107172.</p> <p>21 And if you could just take a look at</p> <p>22 that document, sir, and let me know if you've</p> <p>23 seen that one before.</p> <p>24 A. 107172?</p> <p>25 Q. Well, that -- well, that's the -- for</p>	<p style="text-align: right;">Page 149</p> <p>1 this Raw Material Consumption Report?</p> <p>2 MR. MCGAHREN: Objection to the form.</p> <p>3 A. That's what the report indicates.</p> <p>4 Q. As the corporate designee of</p> <p>5 Sherwin-Williams, does Sherwin-Williams have any</p> <p>6 information to indicate that that is not an</p> <p>7 accurate reporting of the Newark plant's</p> <p>8 consumption of Aroclor 1254 during the time</p> <p>9 period covered by this document?</p> <p>10 A. No.</p> <p>11 Q. And if I could turn your attention</p> <p>12 further into the document. There's a page that</p> <p>13 ends in Bates number 107607.</p> <p>14 And once you get there, similar to the</p> <p>15 last question. There is a -- do you see it's the</p> <p>16 second full entry on that page? And once you've</p> <p>17 had a chance to look at that, as the corporate</p> <p>18 representative of Sherwin-Williams, is it correct</p> <p>19 that this Raw Material Consumption Report is</p> <p>20 reporting the consumption at the Newark plant of</p> <p>21 2,399 pounds of Aroclor 1254?</p> <p>22 MR. MCGAHREN: Objection to form.</p> <p>23 A. That's the consumption number listed for</p> <p>24 Newark for this year.</p> <p>25 Q. And does Sherwin-Williams have any</p>

<p style="text-align: right;">Page 150</p> <p>1 information to indicate that the consumption</p> <p>2 volume reported in this document for Aroclor 1254</p> <p>3 at the Newark plant is not accurate?</p> <p>4 A. No.</p> <p>5 Q. Sir, if you could turn to the first page</p> <p>6 of this document, the cover page.</p> <p>7 A. Which -- this is still 25?</p> <p>8 Q. I'm sorry. Exhibit 25, yes.</p> <p>9 A. Okay.</p> <p>10 Q. And it appears to be a box label that</p> <p>11 was -- well, would you agree that it appears to</p> <p>12 be a label scanned in on top of this document?</p> <p>13 A. Yes.</p> <p>14 Q. As the corporate designee of</p> <p>15 Sherwin-Williams, are you aware of any</p> <p>16 information regarding historical operations at</p> <p>17 the Newark plant that are stored in the files of</p> <p>18 the law firm Jones Day?</p> <p>19 MR. MCGAHREN: Objection to the form.</p> <p>20 And it's also outside the scope of the notice for</p> <p>21 this deposition.</p> <p>22 Q. You can answer.</p> <p>23 A. Can you ask it one more time, please.</p> <p>24 Q. Sure.</p> <p>25 Do you see on this page where it says at</p>	<p style="text-align: right;">Page 152</p> <p>1 look familiar.</p> <p>2 Q. And, for the record, I'll note that this</p> <p>3 is -- this document is complete through Appendix</p> <p>4 B, but we do not include the hundreds of pages.</p> <p>5 A. Okay.</p> <p>6 Q. If I could direct your attention to page</p> <p>7 4-1 of this document.</p> <p>8 Before going there, just to lay a</p> <p>9 foundation: On the cover page, you would agree</p> <p>10 that this document was submitted by Weston</p> <p>11 Solutions on behalf of the Sherwin-Williams</p> <p>12 Company to NJDEP?</p> <p>13 MR. MCGAHREN: Objection to the form.</p> <p>14 Q. You can answer.</p> <p>15 A. I see it was prepared by Weston. I</p> <p>16 don't know if this was provided to the NJDEP.</p> <p>17 MR. MCGAHREN: I'm also going to object</p> <p>18 to the fact it's outside the scope.</p> <p>19 Q. If I could direct your attention to page</p> <p>20 4-1 which ends with Bates number 44236.</p> <p>21 A. 4-1. Okay.</p> <p>22 Q. And there is a subsection bearing the</p> <p>23 number 4.2 that's titled PCB Contamination.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 151</p> <p>1 the top, firm name: Jones, Day, Reavis & Pogue?</p> <p>2 A. Yes.</p> <p>3 Q. And the question is: As the corporate</p> <p>4 designee of Sherwin-Williams, are you aware of</p> <p>5 any documents stored in the files of the law firm</p> <p>6 Jones Day relating to the historical operations</p> <p>7 of the Newark plant?</p> <p>8 A. I don't know. I'm not familiar with</p> <p>9 where they're stored.</p> <p>10 Q. I'm going to mark as Exhibit 26 a</p> <p>11 document that is dated February 27, 2009. It's</p> <p>12 titled Remedial Action Report To Address Soils</p> <p>13 Contamination in AOC A.</p> <p>14 (S-W Exhibit 26, 2-27-09 letter Re:</p> <p>15 Remedial Action Report, Bates-labeled</p> <p>16 TSWC-FED-00044219 - 4488, was marked for</p> <p>17 purposes of identification.)</p> <p>18 MR. MCGAHREN: Thank you.</p> <p>19 Q. If you'd take a look at the document</p> <p>20 that's been marked Exhibit 26 and let me know if</p> <p>21 you've seen that one before, sir.</p> <p>22 MR. MCGAHREN: It's 26, John?</p> <p>23 MR. MCDERMOTT: Yes.</p> <p>24 Q. Have you seen this document before, sir?</p> <p>25 A. Not in its entirety. Some of the pages</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. And that paragraph reads: During</p> <p>2 previous investigations, one soil sample</p> <p>3 location, TR-W2 was identified with a PCB</p> <p>4 concentration of 140 milligrams per kilogram,</p> <p>5 comma, above the TSCA level of 50 milligrams per</p> <p>6 kilogram.</p> <p>7 Do you see that sentence?</p> <p>8 A. I do.</p> <p>9 Q. And it continues: Due to the presence</p> <p>10 of a former building foundation and rubble in the</p> <p>11 vicinity of TR-W2, soil borings could not be</p> <p>12 installed to collect samples for horizontal and</p> <p>13 vertical delineation; therefore, a test pit was</p> <p>14 excavated in the vicinity, vicinity of PCB soil</p> <p>15 sample location. And a soil sample was collected</p> <p>16 on a six-inch interval approximately one foot</p> <p>17 below the impacted area for vertical delineation.</p> <p>18 Did I read that paragraph correctly?</p> <p>19 A. Yes.</p> <p>20 Q. As the corporate representative of</p> <p>21 Sherwin-Williams, is it accurate to say that this</p> <p>22 document is describing a detection of PCBs in</p> <p>23 site soil at the former Newark plant at a</p> <p>24 concentration of 140 milligrams per kilogram?</p> <p>25 A. At that one soil sample location, yes.</p>

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1 Q. If I could direct your attention to --
2 it's Table 5. The Bates number ends in 44277.
3 Let me know when you get there.
4 A. Okay.
5 Q. And I'm correct that Table 5 has the
6 heading Summary of Soil Analytical Results For
7 PCBs; is that right?
8 A. Yes.
9 Q. And it's reporting on PCB sampling of
10 soil collected from the former Newark plant; is
11 that right?
12 A. It's the first time I'm seeing this.
13 I'm not sure what I'm reading yet.
14 Can you repeat the question, though,
15 please.
16 Q. Sure.
17 Is it an accurate characterization to
18 say that this table is reporting on lab analysis
19 of soil samples collected at the former
20 Sherwin-Williams Newark plant?
21 A. Based on the table and the titling and
22 the site ID information in the tables, yes.
23 Q. And if you look at the table itself, one
24 of the analytes reported is Aroclor 1254; is that
25 right?

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1 A. Yes.
2 Q. And in a number of the soil samples
3 reported here, it reports detections of Aroclor
4 1254 in the site soil at the former
5 Sherwin-Williams Newark plant; is that correct?
6 A. I'm sorry. Could you repeat that.
7 Q. Sure.
8 Is it an accurate characterization to
9 say that this Table 5 is reflecting detections of
10 Aroclor 1254 in soil samples collected from the
11 former Sherwin-Williams Newark plant?
12 A. It indicates there were some samples
13 above the limited detection and some that were
14 below.
15 Q. And the highest concentration reported
16 here for Aroclor 1254 on Table 5, you agree, is
17 51 milligrams per kilogram in sample ID TR-W2 at
18 the end of the table?
19 A. Yes.
20 Q. Has Sherwin-Williams performed any --
21 well, let me back up.
22 As the corporate designee for
23 Sherwin-Williams, has Sherwin-Williams performed
24 any analysis regarding whether PCBs present in
25 soils at the tight -- at the site have at any

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1 time discharged into the Passaic River?
2 A. I don't know.
3 Can you -- I'm sorry. Can you repeat
4 that question one more time, please.
5 Q. Sure.
6 MR. MCGAHREN: I'm going to object to
7 the form of the question.
8 Are you talking about soils on the site
9 being in the river?
10 MR. MCDERMOTT: Let me rephrase it.
11 Q. As the corporate designee for
12 Sherwin-Williams, are you aware of any analysis
13 being performed by Sherwin-Williams or on its
14 behalf regarding whether soils contaminated with
15 PCBs at the site of the former Newark plant
16 migrated into the Passaic River at any time?
17 MR. MCGAHREN: Objection to the form of
18 the question.
19 A. I know many of these Weston reports
20 summarize soil sampling being completed. I know
21 we've got a lot of water effluent data. We've
22 looked at how the sewers could potentially allow
23 that to happen.
24 So I guess this specific question you
25 asked -- can you just repeat it one more time. I

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1 apologize.
2 Q. Sure.
3 As the corporate designee of
4 Sherwin-Williams, are you aware of
5 Sherwin-Williams or anybody on its behalf
6 performing an analysis regarding whether site
7 soils contaminated with PCBs have discharged into
8 the Passaic River at any time or migrated into
9 the Passaic River at any time?
10 A. A study --
11 MR. MCGAHREN: Object to form.
12 A. I've not seen a study that lays out
13 exactly what you just asked.
14 Q. Is it your understanding that the
15 reports submitted to NJDEP on behalf of
16 Sherwin-Williams have attributed the presence of
17 Aroclors and PCBs in site soils to PCB-containing
18 transformers that were present at the site during
19 the Sherwin-Williams operation?
20 A. I saw there were trans- -- at least in
21 two -- in two summaries, I saw two transformers
22 as potential sources.
23 Q. As the corporate designee for
24 Sherwin-Williams, did Weston take into account
25 the use -- the consumption of Aroclor 1254 during

<p style="text-align: right;">Page 158</p> <p>1 site operations when evaluating the source of</p> <p>2 PCBs detected in site soil?</p> <p>3 MR. MCGAHREN: Objection to form.</p> <p>4 A. I don't know.</p> <p>5 Q. As the corporate designee of</p> <p>6 Sherwin-Williams, did Sherwin-Williams inform</p> <p>7 Weston that Aroclor 1254 had been consumed as a</p> <p>8 raw material at various times during operations</p> <p>9 at the Newark plant?</p> <p>10 MR. MCGAHREN: Objection to form.</p> <p>11 A. I don't know.</p> <p>12 Q. As the corporate designee for</p> <p>13 Sherwin-Williams, did Sherwin-Williams inform at</p> <p>14 any time NJDEP that Aroclor 1254 had been</p> <p>15 consumed as a raw material at various points</p> <p>16 during the site operations?</p> <p>17 MR. MCGAHREN: Same objection.</p> <p>18 A. I'm sorry. Could you repeat the</p> <p>19 question.</p> <p>20 Q. As the corporate designee for</p> <p>21 Sherwin-Williams, did Sherwin-Williams or anybody</p> <p>22 on its behalf inform NJDEP that Aroclor 1254 had</p> <p>23 been consumed as a raw material at various points</p> <p>24 during operations at the Newark plant?</p> <p>25 MR. MCGAHREN: Same objection.</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. MCGAHREN: Thank you.</p> <p>2 Q. And if you could take a look at that</p> <p>3 one, sir, and let me know if you've seen this</p> <p>4 document.</p> <p>5 A. I've not.</p> <p>6 Q. And similar to the other ones we looked</p> <p>7 at, if I could just draw your attention to the</p> <p>8 page that ends in Bates number 95915. And</p> <p>9 there's an entry at the bottom of that page that</p> <p>10 again states Aroclor 1254.</p> <p>11 Do you see that section?</p> <p>12 A. I'm getting to the page.</p> <p>13 Q. Sure. 95915?</p> <p>14 A. 95915. Okay.</p> <p>15 Q. Do you see the entry that says Aroclor</p> <p>16 1254?</p> <p>17 A. I do.</p> <p>18 Q. And within that entry, am I correct that</p> <p>19 this document indicates that the Newark plant</p> <p>20 during the time period covered by this Raw</p> <p>21 Material Consumption Report consumed 2,399 pounds</p> <p>22 of Aroclor 1254?</p> <p>23 MR. MCGAHREN: Objection to the form.</p> <p>24 Q. You can answer.</p> <p>25 A. Yeah, those are the units. I think that</p>
<p style="text-align: right;">Page 159</p> <p>1 A. I don't know.</p> <p>2 Q. And the last question on that:</p> <p>3 As the corporate designee of</p> <p>4 Sherwin-Williams, has Sherwin-Williams disclosed</p> <p>5 to EPA the use of Aroclor 1254 as a raw material</p> <p>6 during operations at the former Newark plant?</p> <p>7 MR. MCGAHREN: Same objection.</p> <p>8 A. I don't know.</p> <p>9 MR. MCDERMOTT: Why don't we take a</p> <p>10 five-minute break.</p> <p>11 VIDEOGRAPHER: Off the record, 3 p.m.</p> <p>12 (A recess was taken.)</p> <p>13 VIDEOGRAPHER: On the record, 3:14.</p> <p>14 BY MR. MCDERMOTT:</p> <p>15 Q. Just to close out the previous section,</p> <p>16 just a few more questions.</p> <p>17 I'm going to mark as Exhibit 27 another</p> <p>18 document that says -- it's a Material Consumption</p> <p>19 Report. It's dated 1961 to 1962.</p> <p>20 (S-W Exhibit 27, 1961-1962 Material</p> <p>21 Consumption Report, Bates-labeled</p> <p>22 TSWC-FED-00095727 - 6079, was marked for</p> <p>23 purposes of identification.)</p> <p>24 MR. MCDERMOTT: That's the exhibit, and</p> <p>25 that's 27.</p>	<p style="text-align: right;">Page 161</p> <p>1 was pounds.</p> <p>2 Q. And as the corporate designee of</p> <p>3 Sherwin-Williams, does Sherwin-Williams have any</p> <p>4 information to indicate that the quantity of</p> <p>5 Aroclor 1254 recorded as being consumed here is</p> <p>6 not accurate?</p> <p>7 MR. MCGAHREN: Objection to form.</p> <p>8 A. No.</p> <p>9 Q. I'm going to mark as Exhibit 28 a Raw</p> <p>10 Material Consumption Report with Bates stamp</p> <p>11 ending in 96455. That purports to be covering</p> <p>12 September 1st, 1962, through August 31st, 1963.</p> <p>13 (S-W Exhibit 28, Raw Material</p> <p>14 Consumption Report, Bates-labeled</p> <p>15 TSWC-FED-00096455 - 6750, was marked for</p> <p>16 purposes of identification.)</p> <p>17 Q. And if you could take a look at document</p> <p>18 Exhibit 28 and let me know if you've seen that</p> <p>19 one before.</p> <p>20 A. I have not.</p> <p>21 Q. And if I could direct your attention to</p> <p>22 the page that ends with Bates number 96610.</p> <p>23 And do you see in the middle of the page</p> <p>24 there's an entry that again lists Aroclor 1254?</p> <p>25 Do you see that entry, sir?</p>

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1 A. Yes.

2 Q. And under that entry, as the corporate

3 designee of Sherwin-Williams, is it correct that

4 this document reflects that 63 pounds of Aroclor

5 1254 were consumed at the Newark plant during the

6 time period covered by this document?

7 MR. MCGAHREN: Objection to form.

8 Q. You can answer.

9 A. Yes.

10 Q. As the corporate designee of

11 Sherwin-Williams, does Sherwin-Williams have any

12 information indicating that the quantity of

13 Aroclor 1254 reported in that entry is not

14 accurate?

15 A. No.

16 Q. I'm going to mark as Exhibit 29 a May

17 2006 ISRA Investigation Report addendum.

18 (S-W Exhibit 29, ISRA Investigation

19 Report Addendum Phase IV Soil

20 Investigation, Bates-labeled

21 TSWC-FED-00047430 - 7640, was marked for

22 purposes of identification.)

23 Q. Take a look at Exhibit 29 and let me

24 know -- let me know if you've seen that one

25 before.

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1 Have you seen that document, sir?

2 A. Not in totality. I've seen parts of it.

3 Q. If I could -- well, would you agree that

4 this is a document prepared by Weston Solutions

5 on behalf of Sherwin-Williams?

6 A. Yes.

7 Q. And if I could ask you to turn to Table

8 8, and specifically the page whose Bates number

9 ends in 47498.

10 Have you found that page, sir?

11 A. Yes.

12 Q. And am I correct that Table 8 is a

13 summary of soil analytical results regarding

14 samples collected from the former

15 Sherwin-Williams Newark plant?

16 A. Yeah, I don't know the specific

17 locations aside from the codes listed here.

18 Q. But --

19 A. Sorry.

20 Q. -- you don't disagree that these were --

21 the samplings all being reported in this table

22 were collected in site soils from the former

23 plant property?

24 A. Yes.

25 Q. And if you just look at the second row

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1 in the table, it lists the analyte in that row as

2 Aroclor 1254.

3 And if you look in the last column for

4 location ID TR-W2, am I correct that it reports a

5 concentration of 140 milligrams per kilogram?

6 A. Yes.

7 Q. Am I correct that the units of -- if you

8 convert that unit of concentration, that unit of

9 measurement to parts per billion, the sampling

10 result for Aroclor 1254 being reported there is

11 at 140,000 parts per billion?

12 A. I'm sorry. Could you repeat that.

13 Q. Sure.

14 And you may know this from your -- from

15 your role with Sherwin-Williams. But if you

16 convert the concentration in milligrams per

17 kilogram being reported there, the concentration

18 in parts per billion of Aroclor 1254 that was

19 detected in that sample TR-W2 is 140,000 parts

20 per billion?

21 A. That sounds correct.

22 Q. Sir, if I could in the pile of paper in

23 front of you direct you back to Exhibit 17, which

24 is this document. If I could draw your attention

25 to page 18 of Exhibit 17. And, specifically,

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1 there's a heading on page 18, a section that has

2 the heading AOC 6 - Former Transformer Pad Number

3 2.

4 A. Okay.

5 Q. And if you look in the middle of the

6 page, am I correct that NJDEP's comments with

7 respect to Sherwin-Williams' submission regarding

8 PCBs at this AOC reads: The source of the PCBs

9 in AOC 6 is still in question as the highest

10 concentrations were observed away from the former

11 transformer pad. The source should be

12 documented.

13 Do you see that section, or that -- I'm

14 sorry. That statement?

15 A. Yes.

16 Q. And Sherwin-Williams' responses, as

17 indicated in this document -- well, let me back

18 up.

19 Am I correct that Sherwin-Williams'

20 response, as indicated in this document, is that

21 the source -- if you look at the paragraph below

22 that, the source of PCBs in AOC 6 is the former

23 transformers, the department is correct in their

24 statement that the highest levels of PCB

25 contamination are identified away from the

<p style="text-align: right;">Page 166</p> <p>1 transformer pad. There are many depositional</p> <p>2 modes that could have caused this fact.</p> <p>3 Do you see that statement, sir?</p> <p>4 A. I do.</p> <p>5 Q. Do you know whether Sherwin-Williams,</p> <p>6 Weston, or NJDEP, in considering the source of</p> <p>7 PCB contamination being discussed here,</p> <p>8 considered the historic use of Aroclor 1254</p> <p>9 during operations at the Newark plant as a</p> <p>10 potential source of PCB contamination in site</p> <p>11 soil?</p> <p>12 MR. MCGAHREN: Objection to the form.</p> <p>13 A. Can you ask that one more time.</p> <p>14 Q. Sure.</p> <p>15 As the corporate designee for</p> <p>16 Sherwin-Williams, do you know whether</p> <p>17 Sherwin-Williams, Weston, or NJDEP considered the</p> <p>18 historic -- the historical use of Aroclor 1254 at</p> <p>19 the Newark plant as a potential source of the PCB</p> <p>20 contamination in site soil being discussed in</p> <p>21 this paragraph?</p> <p>22 MR. MCGAHREN: Objection to the form of</p> <p>23 the question.</p> <p>24 A. I don't know.</p> <p>25 Q. If I could direct your attention back to</p>	<p style="text-align: right;">Page 168</p> <p>1 Is that a fair statement of</p> <p>2 Sherwin-Williams' response as to lead?</p> <p>3 A. Yes.</p> <p>4 Q. Testifying here today as</p> <p>5 Sherwin-Williams' corporate designee, was</p> <p>6 Sherwin-Williams' March 2nd, 1995, response to</p> <p>7 Request Number 3 as to lead accurate?</p> <p>8 MR. MCGAHREN: I'm going to object to</p> <p>9 the form of the question.</p> <p>10 A. Yeah. Can you be more specific as to</p> <p>11 what?</p> <p>12 Q. Sure.</p> <p>13 Is it correct that many substance --</p> <p>14 well, let me back up.</p> <p>15 Is it correct that many products</p> <p>16 manufactured at the Newark plant throughout the</p> <p>17 course of its operations contained lead?</p> <p>18 MR. MCGAHREN: Objection to the form of</p> <p>19 the question.</p> <p>20 Q. You can answer.</p> <p>21 A. I think this response is still accurate.</p> <p>22 They may have been present in raw products to</p> <p>23 produce the finished goods.</p> <p>24 Q. As the corporate designee of</p> <p>25 Sherwin-Williams, would you agree that the</p>
<p style="text-align: right;">Page 167</p> <p>1 Exhibits 2 and 3, sir, the 104E request and the</p> <p>2 1995 response.</p> <p>3 MR. MCGAHREN: 2 and 3, this is?</p> <p>4 THE WITNESS: Yeah. 3 is in this pile.</p> <p>5 MR. MCGAHREN: The original one.</p> <p>6 Got it?</p> <p>7 Q. With respect to Exhibit Number 2, which</p> <p>8 is the 1995 104E request, if you refer back to</p> <p>9 Request Number 3, sir, am I correct that Request</p> <p>10 Number 3 requests that Sherwin-Williams identify,</p> <p>11 identify if the Newark plant received, utilized,</p> <p>12 manufactured, discharged, released or disposed of</p> <p>13 any materials containing lead?</p> <p>14 Is that one of the -- well, let me ask</p> <p>15 that differently.</p> <p>16 Did EPA in Request Number 3 include that</p> <p>17 request to Sherwin-Williams?</p> <p>18 A. Yes.</p> <p>19 Q. And on Exhibit 3, Sherwin-Williams'</p> <p>20 March 2nd, 1995, response. Am I correct that,</p> <p>21 with respect to lead, Sherwin-Williams' response</p> <p>22 was "the remaining substances," and then it lists</p> <p>23 several responses, including lead may have been</p> <p>24 present in raw products used at the facility</p> <p>25 prior to 1984.</p>	<p style="text-align: right;">Page 169</p> <p>1 qualifier may have been present in raw products</p> <p>2 is misleading?</p> <p>3 MR. MCGAHREN: Objection. Form.</p> <p>4 Q. You can answer.</p> <p>5 A. That's an opinion. I mean, "may" means</p> <p>6 it very well could. And I think from the Raw</p> <p>7 Material Sheets, we saw that where there were</p> <p>8 some lead compounds.</p> <p>9 Q. I'm going to mark as Exhibit 30 a</p> <p>10 document that has the Bates number ending in</p> <p>11 86104.</p> <p>12 (S-W Exhibit 30, What Fifty Years Have</p> <p>13 Wrought presentation, Bates-labeled</p> <p>14 TSWC-FED-00086104 - 6236, was marked for</p> <p>15 purposes of identification.)</p> <p>16 Q. And if I could just ask you to take a</p> <p>17 look at that document, sir, that's been marked as</p> <p>18 Exhibit 30 and let me know if you've seen it</p> <p>19 before.</p> <p>20 A. I don't recall seeing this.</p> <p>21 Q. If I could draw your attention to the</p> <p>22 page of this document that ends in Bates number</p> <p>23 86227.</p> <p>24 A. I'm sorry. 862...</p> <p>25 Q. "-27."</p>

<p style="text-align: right;">Page 170</p> <p>1 A. I see an 86026, 86028. Am I skipping</p> <p>2 it?</p> <p>3 Q. You might be. It looks like this.</p> <p>4 A. Okay.</p> <p>5 Q. And once you get to that page -- well,</p> <p>6 I'll wait for you.</p> <p>7 A. Okay.</p> <p>8 Q. Am I correct that this page has the</p> <p>9 title Some Sherwin-Williams -- Sherwin-Williams</p> <p>10 Facilities?</p> <p>11 And it lists about -- a little more than</p> <p>12 halfway down, it states: Insecticide and</p> <p>13 fungicide plants, and then it lists Chicago and</p> <p>14 Newark.</p> <p>15 Do you see that, sir?</p> <p>16 A. I apologize. I must be still on the</p> <p>17 wrong page.</p> <p>18 Q. No worries.</p> <p>19 A. Are you seeing this?</p> <p>20 Q. No. I wonder -- I hope I gave you the</p> <p>21 right document.</p> <p>22 A. Yeah. I don't see any -- these are all</p> <p>23 two- -- five-digit numbers on the end. You</p> <p>24 shared a four-digit number. I've got 86236 is</p> <p>25 the last page I have.</p>	<p style="text-align: right;">Page 172</p> <p>1 the question. Lack of foundation, as well.</p> <p>2 A. This is 1916, so it doesn't speak to</p> <p>3 before or after the window in between the other</p> <p>4 dates. So, for 1916, it indicates that.</p> <p>5 Q. I'm going to mark for -- I'm going to</p> <p>6 mark as Exhibit 31 a document that ends -- the</p> <p>7 Bates number on the first page ends with 86237.</p> <p>8 (S-W Exhibit 31, The Chameleon,</p> <p>9 Bates-labeled TSWC-FED-00086237, was</p> <p>10 marked for purposes of identification.)</p> <p>11 Q. After you've had a chance to take a look</p> <p>12 at that one, sir, let me know if you've seen it</p> <p>13 before.</p> <p>14 A. I have not seen this.</p> <p>15 Q. And am I correct that from the cover of</p> <p>16 the document, it appears to be a publication with</p> <p>17 the title The Chameleon, and it states Volume 15,</p> <p>18 1912; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. And if you turn to page, the pages --</p> <p>21 well, they're on the side, the Bates numbers.</p> <p>22 The Bates number on this page ends with 86302.</p> <p>23 It's the third page.</p> <p>24 A. Okay.</p> <p>25 Q. If you -- there's small type beneath the</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Why don't you swap out with my copy.</p> <p>2 A. Okay.</p> <p>3 Q. And we'll just switch the stickers on a</p> <p>4 break.</p> <p>5 Am I correct, once you've had a chance</p> <p>6 to take a look at that, it lists under the</p> <p>7 heading Some Sherwin-Williams Facilities, and it</p> <p>8 indicates that Chicago and Newark are insecticide</p> <p>9 and fungicide plants?</p> <p>10 A. Yes. And I think I misheard you. So I</p> <p>11 heard just 207. Okay. If you want to switch,</p> <p>12 you can...</p> <p>13 Q. And, well, if you turn to the -- early</p> <p>14 on in the document -- I'm trying to date this</p> <p>15 one.</p> <p>16 If you turn to page 86109, which is one</p> <p>17 of the first few pages. I'm correct that it says</p> <p>18 "Copyright 2016 by the Sherwin-Williams Company"?</p> <p>19 A. That's correct.</p> <p>20 Q. It says -- as the corporate designee for</p> <p>21 Sherwin-Williams, is it your understanding that</p> <p>22 from the beginning of operations at the Newark</p> <p>23 plant, the component of the operations there was</p> <p>24 the production of insecticides?</p> <p>25 MR. MCGAHREN: Objection to the form of</p>	<p style="text-align: right;">Page 173</p> <p>1 heading The Chameleon.</p> <p>2 And am I correct that it reads:</p> <p>3 Published each month, and then something that's</p> <p>4 illegible, for the interest and benefit of the</p> <p>5 Sherwin-William -- Sherwin-Williams Company's</p> <p>6 staff?</p> <p>7 MR. MCGAHREN: Objection to form.</p> <p>8 Q. Is that --</p> <p>9 A. Seems --</p> <p>10 Q. -- the legible part?</p> <p>11 A. Seems close.</p> <p>12 Q. And then the part I want to direct your</p> <p>13 attention to is the last page of the print, Bates</p> <p>14 number -- the page Bates number ends in 86307.</p> <p>15 And, in particular, the last section of the</p> <p>16 document which has the heading Newark.</p> <p>17 Do you see that part?</p> <p>18 A. Yes.</p> <p>19 Q. Am I correct that it states: It has</p> <p>20 been decided to put up an addition to the</p> <p>21 Arsenate of Lead plant; work will be started at</p> <p>22 once?</p> <p>23 Do you see that sentence?</p> <p>24 A. I do.</p> <p>25 Q. Sentences?</p>

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1 Am I -- as the corporate designee of
2 Sherwin-Williams, am I correct that that document
3 indicates that, as of the publication of this --
4 of this document marked Exhibit 31, Arsenate of
5 Lead was being produced at the Newark plant?
6 A. I couldn't say that that's what was
7 being produced. That was raw material in the
8 coatings process, but it looks like they were
9 putting up an addition, calling it the Arsenate
10 of Lead plant.
11 Q. Bear with me for one second.
12 I'm going to mark as Exhibit 32 a
13 document that states: Annual reports for the
14 year ending August 31st, 1902.
15 (S-W Exhibit 32, Annual Reports, dated
16 8-31-1902, Bates-labeled
17 TSWC-FED-00091314 - 1429, was marked for
18 purposes of identification.)
19 Q. And if you could take a look at that
20 document that's been marked as Exhibit 32, sir,
21 I'm looking to know if you've seen that one
22 before.
23 A. I have not.
24 Q. If I could direct your attention to
25 about halfway through the document, there's a

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1 page with the Bates number ending in 91370. When
2 you get to that page, if I could direct your
3 attention --
4 Well, is it fair to say that this page
5 is a Newark factory output from September 1st,
6 1901, to September 1st, 1902, according to the
7 heading?
8 A. According to the heading, yes.
9 Q. And toward the bottom of the list,
10 there's a line item that reads: Leads and zincs.
11 Do you see that line item, sir?
12 A. I do.
13 Q. And it indicates that the Newark factory
14 output for 1901 of leads and zincs was 588
15 pounds; is that correct?
16 A. Yes.
17 Q. And --
18 MR. MCGAHREN: We object to the form of
19 that question.
20 MR. MCDERMOTT: Okay.
21 Q. And then the next column, you would
22 agree, indicates that in 1902, the Newark factory
23 output, output of leads and zincs was 83,762
24 pounds?
25 A. Yeah. I mean, that doesn't really

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1 describe what leads and zincs is. I mean, I
2 don't know if that's in solution, if that's a
3 finished product. Yes, but that production level
4 indicates -- whatever leads and zincs is, that
5 that was the output.
6 Q. And you would agree that some portion of
7 that output would contain -- would have contained
8 lead?
9 A. The name implies it. I don't know if it
10 was a compound, if it was an elemental, if it was
11 in a finished -- you know, a material in a
12 finished good. I couldn't speculate as to what
13 exactly it's referring to.
14 Q. I'm going to mark as Exhibit 33 a
15 document with the Bates number ending in 85946.
16 (S-W Exhibit 33, What Our Factory
17 Experts are Doing, Bates-labeled
18 TSWC-FED-00085946, was marked for
19 purposes of identification.)
20 Q. And if you could take a look at the
21 document marked as Exhibit 33 and let me know if
22 you've seen that one before, please.
23 A. I've not seen this.
24 Q. And you can take a moment to look at it,
25 but the part I'm going to -- I'm going to direct

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1 your attention to is under the heading Newark.
2 And in the second column of this page,
3 am I correct that it states: We are just taking
4 on the manufacture of Chrome Yellows at this
5 factory, and to make room for it, we are being
6 relieved of Arsenate of Lead which will now be
7 manufactured entirely at Chicago.
8 Do you see that sentence, sir?
9 A. I do.
10 Q. As the corporate designee of
11 Sherwin-Williams, is it correct that that
12 statement indicates that Arsenate of Lead was
13 being manufactured at the Newark plant?
14 MR. MCGAHREN: Objection to the form.
15 Q. You can answer.
16 A. It indicates it's moving to Chicago. I
17 don't know what manufacturing of Arsenate of Lead
18 entails. So whether that is a finished paint and
19 coating or that's pigment I don't quite know, but
20 it indicates that a process is moving to Chicago.
21 Q. And I'm correct that they specifically
22 use the term "manufacturing" in that statement?
23 A. That is the term used.
24 MR. MCGAHREN: Objection to the form.
25 Q. I'm going to mark as Exhibit 34 a

<p style="text-align: right;">Page 178</p> <p>1 document that -- whose Bates number ends in</p> <p>2 85945.</p> <p>3 (S-W Exhibit 34, The Chameleon,</p> <p>4 Bates-labeled TSWC-FED-00085945, was</p> <p>5 marked for purposes of identification.)</p> <p>6 Q. And when you've had a chance to look at</p> <p>7 Exhibit 34, if you can let me know if you've seen</p> <p>8 this one before.</p> <p>9 A. I don't know if I'm permitted or not.</p> <p>10 The prior document did not have a date, unless I</p> <p>11 missed it.</p> <p>12 Q. I will note that for the record. I</p> <p>13 noticed that, too.</p> <p>14 A. Okay. I've not seen this document.</p> <p>15 Q. And the part I want to draw your</p> <p>16 attention to is, again, under the section heading</p> <p>17 Newark. And the third paragraph under that</p> <p>18 section reads: A new building designed specially</p> <p>19 for the manufacture of Lead Liquor, a product now</p> <p>20 used in a very large way in our Dry Color</p> <p>21 Department, is in course of construction -- is in</p> <p>22 course of construction and will be ready for</p> <p>23 occupancy very shortly.</p> <p>24 Did I read that statement correctly?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 180</p> <p>1 Insecticide Department. I personally don't know</p> <p>2 if Arsenate of Lead is an insecticide.</p> <p>3 Q. I'm going to mark as Exhibit 35 a</p> <p>4 document that on the cover states The Chameleon,</p> <p>5 1920. And the Bates number of the first page</p> <p>6 ends in 88707. [Sic]</p> <p>7 (S-W Exhibit 35, The Chameleon, 1920,</p> <p>8 Bates-labeled TSWC-FED-00088682 and</p> <p>9 8707, was marked for purposes of</p> <p>10 identification.)</p> <p>11 Q. And if you can take a look at that</p> <p>12 document, sir, and let me know if you've seen</p> <p>13 this one.</p> <p>14 A. I -- I've not seen this.</p> <p>15 Q. The specific portion of this document</p> <p>16 I'd like to draw your attention to, sir, is on</p> <p>17 the second page under the heading Our Newark</p> <p>18 Plant.</p> <p>19 And in the third column, there's a</p> <p>20 paragraph that begin -- begins: Some idea of the</p> <p>21 principal raw materials consumed monthly in the</p> <p>22 Newark plant may be gained from the following</p> <p>23 figures.</p> <p>24 And it lists several quantities. And at</p> <p>25 the end of that list -- or near the end of that</p>
<p style="text-align: right;">Page 179</p> <p>1 Q. As the corporate designee for</p> <p>2 Sherwin-Williams, am I correct that that</p> <p>3 statement indicates that, as of the point that</p> <p>4 this document was authored, the manufacture of</p> <p>5 Lead Liquor was planned for the Newark plant?</p> <p>6 MR. MCGAHREN: I'm going to object to</p> <p>7 the form of the question.</p> <p>8 Q. You can answer.</p> <p>9 A. I don't know what Lead Liquor is</p> <p>10 exactly, but that's what that sentence reads.</p> <p>11 Q. And in the section above Newark, there</p> <p>12 is another section that addresses the Chicago</p> <p>13 plant. And I just want to draw your attention to</p> <p>14 the second-to-last sentence in that section that</p> <p>15 reads: The insecticides -- Insecticide</p> <p>16 Departments are operating at full capacity,</p> <p>17 stocking up on Paris Green, Lime-Sulfur, and</p> <p>18 Arsenate of Lead.</p> <p>19 Do you see that sentence?</p> <p>20 A. I do.</p> <p>21 Q. Does that sentence indicate that</p> <p>22 Arsenate of Lead which we just discussed with</p> <p>23 respect to another document is an insecticide?</p> <p>24 MR. MCGAHREN: Objection to the form.</p> <p>25 A. They reference it's made within the</p>	<p style="text-align: right;">Page 181</p> <p>1 list, it states: 200 tons lead, zinc, and ozlo</p> <p>2 pigment.</p> <p>3 Do you see that portion -- the portion</p> <p>4 that I just read, sir?</p> <p>5 A. I do.</p> <p>6 Q. As the corporate designee of</p> <p>7 Sherwin-Williams, does that statement indicate</p> <p>8 that 2- -- at the point that this document was</p> <p>9 published in 1920, 200 tons of lead, zinc, and</p> <p>10 ozlo pigment were consumed monthly at the Newark</p> <p>11 plant?</p> <p>12 MR. MCGAHREN: Objection to the form.</p> <p>13 A. That is how it reads.</p> <p>14 Q. And, as the corporate designee of</p> <p>15 Sherwin-Williams, Sherwin-Williams does not have</p> <p>16 any information indicating that the quantity --</p> <p>17 the monthly quantities consumed of lead, zinc,</p> <p>18 and ozlo pigments in this document is inaccurate;</p> <p>19 is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. I want to mark as Exhibit 36 a document</p> <p>22 that has a date stamp of May 3rd, 1946. And it</p> <p>23 bears the Bates number ending in 48065.</p> <p>24 (S-W Exhibit 36, 5-3-46 Technical</p> <p>25 Services, Bates-labeled</p>

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1 TSWC-FED-00048065 - 8067, was marked for
2 purposes of identification.)
3 Q. And if you could take a look at this
4 document, sir, and let me know if you've seen
5 this one before.
6 A. I haven't seen this.
7 THE REPORTER: "Haven't"?
8 THE WITNESS: "I have not."
9 Q. If you could take a look at this
10 document, then. And, in particular, the
11 information in the top left-hand corner of the
12 first page -- and let me know if it's fair to
13 conclude that this document is -- was prepared by
14 the Technical Service Department at the Newark
15 factory.
16 MR. MCGAHREN: I'm going to object to
17 the form of the question. None of these
18 documents have a Bates stamp on them. The other
19 ones did.
20 MR. MCDERMOTT: I'm sorry?
21 MR. MCGAHREN: These don't have a
22 Sherwin-Williams Bates stamp on them. The other
23 ones you were showing him did.
24 MR. MCDERMOTT: The TSWC-FED Bates
25 prefix is a Sherwin-Williams Bates prefix.

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1 A. The header indicates Technical Service.
2 Q. And if you turn to the third page of the
3 document Bates stamp ending in 48067, a little
4 bit further than halfway down the page, it
5 states: In order to give you some idea of what
6 goes into the manufacturing of paint, please note
7 the following.
8 And the first entry under that heading
9 states: Minerals used in paints. And then it
10 lists several minerals, including lead.
11 Is that -- is that accurate?
12 A. That is what that reads.
13 Q. I'm going to mark as -- this is already
14 marked.
15 MS. KROHN: 22.
16 Q. Unless there's something you have to add
17 for that document, sir.
18 If I could draw your attention to what
19 was marked previously as Exhibit 22. It looks
20 like this.
21 A. Sorry. These are all in different
22 order. 22?
23 Q. Yes.
24 A. Okay.
25 Q. And once you have that document in front

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1 of you, I'll have to get you somebody to sort
2 through those documents.
3 Once you have that exhibit in front of
4 you, if you could turn to the page with the Bates
5 number ending 95530. It's toward the end. And
6 specifically on this page, there's an entry
7 around the middle of the page that reads: White
8 lead.
9 And am I correct that this entry
10 indicates that the Newark plant during the period
11 of time covered by this Raw Material Consumption
12 Report had consumed 329,329 pounds of lead, of
13 white lead?
14 MR. MCGAHREN: Objection to the form.
15 Q. Is that accurate?
16 A. That is what that line reads.
17 Q. And two entries down, there is another
18 raw material listed with the name sublimed blue
19 lead. And that entry indicates that the Newark
20 plant, during the period of time covered by this
21 Raw Material Consumption Report, had consumed
22 4,149 -- 4,149 pounds of lead; is that accurate,
23 sir?
24 A. Yes.
25 Q. And then two entries down from that,

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1 there is a raw material listed that is named
2 leaded zinc ozlo 18M. And that entry indicates
3 that during the period of time covered by this
4 Raw Material Consumption Report, the Newark plant
5 had consumed 1,192,400 pounds of leaded zinc
6 ozlo.
7 Is that accurate, sir?
8 A. Yes.
9 Q. And, as the corporate designee for
10 Sherwin-Williams, do you agree that
11 Sherwin-Williams does not have any information to
12 indicate that the quantities reported in this Raw
13 Material Consumption Report for September 1st,
14 1959, through August 31st, 1960, are inaccurate?
15 Is that right, sir?
16 MR. MCGAHREN: Objection to the form.
17 A. It's correct.
18 MR. MCDERMOTT: Why don't we go off the
19 record for a minute.
20 VIDEOGRAPHER: Off the record, 4:03.
21 (A recess was taken.)
22 VIDEOGRAPHER: On the record, 4:19.
23 BY MR. MCDERMOTT:
24 Q. Sir, if I could direct your attention
25 once again back to Exhibits 2 and 3, the 104E

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1 request from 1995 and Sherwin-Williams' response.
 2 A. Sorry. This number 3 keeps fading away.
 3 Here we go. Okay.
 4 Q. Once you have those in front of you, I'd
 5 like to refer you this time to Request Number 5.
 6 And am I correct that Request Number 5
 7 from EPA states: Describe the methods of
 8 collection, storage, treatment, and disposal of
 9 all hazardous substances including but not
 10 limited to the substances listed in response to
 11 item 3 and 4.
 12 Is that an accurate reading of the first
 13 part of Request 5?
 14 A. Yes.
 15 Q. And Sherwin-Williams' response on
 16 Exhibit 3 to that portion of Request Number 5 is:
 17 Sherwin-Williams has not collected, stored,
 18 treated or disposed of any hazardous substances
 19 since 1984 at this facility.
 20 Is that an accurate reading of that
 21 first portion of Sherwin-Williams' response?
 22 A. Yes.
 23 Q. Am I correct that, based on the records
 24 that you reviewed, Sherwin-Williams did, in fact,
 25 store hazardous substances at the Newark plant

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1 prior to 1984?
 2 A. Could you ask that one more time,
 3 please.
 4 Q. Sure. Well, let me ask it a little bit
 5 different way.
 6 Is it fair to say that this response
 7 only addresses the collection, storage, treatment
 8 or disposal of hazardous substances at the Newark
 9 plant from 1984 forward?
 10 MR. MCGAHREN: Objection to the form.
 11 A. It's hard for me to speculate the
 12 perspective used to answer this question.
 13 I mean, this '80s window is when a lot
 14 of the environmental regulations were -- defined
 15 what a hazardous substance was. That may be what
 16 he's referring to here. And, again, I don't know
 17 what information we reviewed today that was
 18 available for this comment to be made.
 19 So at the time when this was provided in
 20 '95, I'm not sure what information was used to
 21 make this response.
 22 Q. Well, let's take lead as one example.
 23 We just looked through a number of documents.
 24 You would agree that we just looked through a
 25 number of documents that reflected the storage of

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1 raw materials containing lead at the Newark plant
 2 for various years?
 3 MR. MCGAHREN: Objection to form.
 4 Q. Is that accurate?
 5 A. Can you repeat one more time.
 6 Q. Sure.
 7 In the exhibits that we just looked
 8 through in the deposition, you would agree that
 9 for various years prior to 1984, documents
 10 reflected the consumption of raw materials
 11 containing lead at the Newark plant?
 12 A. Lead compounds, yes.
 13 Q. And Sherwin-Williams -- am I correct --
 14 well, as the corporate designee for
 15 Sherwin-Williams, am I correct that the response
 16 submitted in March 1995 by Sherwin-Williams to
 17 Request 5 does not mention lead?
 18 A. Correct, the narrative does not. The
 19 word "lead" is not in the response.
 20 Q. At any time since this response was
 21 submitted in March 1995, has Sherwin-Williams
 22 provided EPA with an amended response to Request
 23 Number 5 in any form?
 24 A. I'm sorry. Related to lead, you said?
 25 Q. Well, related to Request Number 5 as to

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1 lead or any other hazardous substance.
 2 You want me to rephrase it? We kind of
 3 got...
 4 A. Please.
 5 Q. At any point -- as the corporate
 6 designee for Sherwin-Williams, at any point since
 7 this response was submitted in March 1995, has
 8 Sherwin-Williams submitted to EPA a supplemental
 9 response in any form to Request Number 5?
 10 A. I don't know. I've not seen one.
 11 Q. Staying with Exhibit -- actually, before
 12 we do that, let me mark Exhibit 37, which is an
 13 excerpted portion of a document entitled Expert
 14 Report of Colleen Dunlavy, Ph.D.
 15 (S-W Exhibit 37, Exhibit B, was marked
 16 for purposes of identification.)
 17 Q. If you could take a look at Exhibit 37,
 18 sir, and let me know if you've seen that before.
 19 MR. MCGAHREN: What's the source of this
 20 document?
 21 MR. MCDERMOTT: Pacer. I'll represent
 22 that it is an exhibit filed by Sherwin-Williams.
 23 It's an expert report prepared on behalf of
 24 Sherwin-Williams.
 25 A. I have not seen this.

<p style="text-align: right;">Page 190</p> <p>1 MR. MCGAHREN: Who is the expert? This</p> <p>2 is you're saying Sherwin-Williams' expert?</p> <p>3 MR. MCDERMOTT: Yes.</p> <p>4 Q. If you look at the first page of text</p> <p>5 after the table of contents -- and you can take</p> <p>6 your time and look at the document, if you'd</p> <p>7 like. But I'm going to refer you to roman</p> <p>8 numeral 2 is the section number. It says:</p> <p>9 Summary of Dr. Dunlavy's opinions and expected</p> <p>10 testimony.</p> <p>11 A. And I'm sorry. Which page are you on?</p> <p>12 Q. It is -- the footer has it as page 5 of</p> <p>13 24.</p> <p>14 A. Okay.</p> <p>15 Q. And the summary of testimony reads:</p> <p>16 Dr. Dunlavy is expected to testify regarding the</p> <p>17 history of the Sherwin-Williams Company,</p> <p>18 including the founding of the company, the</p> <p>19 evolution of its business and product lines, its</p> <p>20 participation in trade organizations, the</p> <p>21 company's position in the national and local</p> <p>22 paint and pigment markets, the historical demand</p> <p>23 for white lead carbonate pigments, and the</p> <p>24 historically reported benefits of white lead</p> <p>25 carbonate, particularly in exterior paint.</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. And later on in the paragraph, several</p> <p>2 lines down, it states: Dr. Dunlavy has also --</p> <p>3 or also has visited the Sherwin-Williams Center</p> <p>4 of Excellence and document storage facilities.</p> <p>5 She has reviewed depositions given in this and</p> <p>6 other cases by Sherwin-Williams' corporate</p> <p>7 representatives of plaintiffs' witnesses and has</p> <p>8 interviewed a retired Sherwin-Williams employee.</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. As the corporate designee of</p> <p>12 Sherwin-Williams, do you have an understanding of</p> <p>13 where the information that Dr. Dunlavy describes</p> <p>14 here as having been reviewed to form her opinions</p> <p>15 in this case, where those materials are located?</p> <p>16 MR. MCGAHREN: I'm going to object to</p> <p>17 the form of the question. Object. This is way</p> <p>18 outside the scope of the subject matter for this</p> <p>19 deposition.</p> <p>20 MR. MCDERMOTT: I disagree.</p> <p>21 Q. But you can answer.</p> <p>22 A. I don't read that this is one source.</p> <p>23 So I see Center of Excellence, document</p> <p>24 storage facilities, a whole bunch of different</p> <p>25 file types above.</p>
<p style="text-align: right;">Page 191</p> <p>1 And then it continues: Dr. Dunlavy is</p> <p>2 also expected to testify regarding</p> <p>3 Sherwin-Williams' use of white lead carbonates</p> <p>4 and other pigments in its paint.</p> <p>5 Did I read that portion of the paragraph</p> <p>6 correctly, sir?</p> <p>7 MR. MCGAHREN: Objection to form.</p> <p>8 A. Yes.</p> <p>9 Q. And in the next section which is roman</p> <p>10 numeral 3, Basis For Dr. Dunlavy's Expected</p> <p>11 Opinions, that section states: Dr. Dunlavy has</p> <p>12 employed accepted historical research methods and</p> <p>13 studying the subjects identified above and all of</p> <p>14 her opinions are rendered to a reasonable degree</p> <p>15 of historical certainty. She has reviewed</p> <p>16 thousands of pages of Sherwin-Williams' records</p> <p>17 including but not limited to board of directors</p> <p>18 and shareholder meeting minutes, financial</p> <p>19 documents, paint formulas, price lists, product</p> <p>20 brochures, and product manuals, shipping records,</p> <p>21 raw material purchase and consumption</p> <p>22 information, product information, and internal</p> <p>23 and external company publications.</p> <p>24 Did I read that correctly, sir?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 193</p> <p>1 And can you ask one more time.</p> <p>2 Q. Well, sure. Let's take them in smaller</p> <p>3 chunks.</p> <p>4 One of the portions that I read stated</p> <p>5 that Dr. Dunlavy also has visited the</p> <p>6 Sherwin-Williams Center of Excellence and</p> <p>7 document storage facilities. This -- the</p> <p>8 Sherwin-Williams Center For Excellence [sic], is</p> <p>9 it your understanding that -- well, what is the</p> <p>10 Sherwin-Williams Center of Excellence?</p> <p>11 A. The simplest description is a museum,</p> <p>12 summary of Sherwin-Williams' history.</p> <p>13 Q. As the corporate designee for</p> <p>14 Sherwin-Williams, do you have an understanding as</p> <p>15 to whether the Sherwin-Williams Center of</p> <p>16 Excellence contains documents or other materials</p> <p>17 relating to the former operations at the Newark</p> <p>18 plant?</p> <p>19 MR. MCGAHREN: Objection to the form of</p> <p>20 the question. Objection to outside the scope of</p> <p>21 the notice.</p> <p>22 You can answer if you know.</p> <p>23 A. I don't know, but I don't believe so.</p> <p>24 MR. MCGAHREN: Then don't answer if you</p> <p>25 don't know.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. Also referenced in the portion that I</p> <p>2 read, Dr. Dunlavy indicated that she reviewed</p> <p>3 paint formulas.</p> <p>4 As the corporate designee of</p> <p>5 Sherwin-Williams, do you have any understanding</p> <p>6 of where the paint formulas of the products --</p> <p>7 relating to the products manufactured at the</p> <p>8 former Newark plant are located?</p> <p>9 MR. MCGAHREN: Objection to the form of</p> <p>10 the question. And objection to being outside the</p> <p>11 scope of the noticed subject for this deposition.</p> <p>12 Q. You can answer.</p> <p>13 MR. MCGAHREN: If you know.</p> <p>14 A. I don't know.</p> <p>15 Q. If I could refer you back to Exhibit 2,</p> <p>16 the Request For Information from EPA, and</p> <p>17 specifically to Request Number 12.</p> <p>18 And am I correct that Request Number 12</p> <p>19 instructs Sherwin-Williams to provide a copy of</p> <p>20 each document which relates to the generation,</p> <p>21 purchase, use, handling, hauling, and/or disposal</p> <p>22 of all hazardous substances including but not</p> <p>23 limited to the substances listed in response to</p> <p>24 item 3 and 4?</p> <p>25 And it continues: If you are unable to</p>	<p style="text-align: right;">Page 196</p> <p>1 A. Yes.</p> <p>2 Q. As the corporate designee of</p> <p>3 Sherwin-Williams, do you agree that</p> <p>4 Sherwin-Williams' response to Request Number 12</p> <p>5 indicates that the records that it describes in</p> <p>6 that response are located at the Lister Avenue</p> <p>7 facility at the time that this response was</p> <p>8 submitted?</p> <p>9 A. That's how it reads, yes.</p> <p>10 Q. Sherwin-Williams no longer owns the</p> <p>11 plant site, right?</p> <p>12 A. That's my understanding.</p> <p>13 Q. As the corporate designee of</p> <p>14 Sherwin-Williams, do the documents described in</p> <p>15 Sherwin-Williams' response to Request Number 12</p> <p>16 still exist?</p> <p>17 MR. MCGAHREN: Objection to the form of</p> <p>18 the question and objection to being outside the</p> <p>19 scope of the subjects, notice of this deposition.</p> <p>20 A. I've seen documents that would match</p> <p>21 this request. Comprehensively, I don't know if a</p> <p>22 comprehensive list of these documents exist.</p> <p>23 Q. Well, do you know if the docu- -- well,</p> <p>24 do the documents themselves still exist?</p> <p>25 MR. MCGAHREN: Objection to the form of</p>
<p style="text-align: right;">Page 195</p> <p>1 provide a copy of any document, then identify the</p> <p>2 document by describing the nature of the</p> <p>3 document.</p> <p>4 And then it continues: Describe the</p> <p>5 relevant information contained therein.</p> <p>6 And then: Identify by name and job</p> <p>7 title the person who prepared the document. And,</p> <p>8 finally, if the document is not readily</p> <p>9 available, state where it is stored, maintained,</p> <p>10 or why it is unavailable.</p> <p>11 Is that an accurate characterization of</p> <p>12 Request Number 12?</p> <p>13 MR. MCGAHREN: Object to the form of the</p> <p>14 question. It's not...</p> <p>15 A. I think you paraphrased Number 12 as a</p> <p>16 summary.</p> <p>17 Q. And, on Exhibit 3, Sherwin-Williams'</p> <p>18 response to Request Number 12 is:</p> <p>19 Sherwin-Williams states that the documentation as</p> <p>20 requested in Number 12, including manifest</p> <p>21 inventory forms and billing records, are located</p> <p>22 at the Lister Avenue facility and can be made</p> <p>23 available for inspection and copying at a</p> <p>24 mutually convenient time.</p> <p>25 Did I read that response correctly, sir?</p>	<p style="text-align: right;">Page 197</p> <p>1 the question. Objection to being outside the</p> <p>2 scope of the subjects.</p> <p>3 MR. MCDERMOTT: Well, just on that</p> <p>4 point, Topic Number 12 is the destruction of any</p> <p>5 documents relating to Sherwin-Williams'</p> <p>6 operations at the Newark plant.</p> <p>7 MR. MCGAHREN: You're asking about the</p> <p>8 retention, not the destruction. It's outside the</p> <p>9 scope.</p> <p>10 Q. You can answer.</p> <p>11 A. I'm sorry. One more -- one more repeat,</p> <p>12 please.</p> <p>13 Q. Let's frame it from the other</p> <p>14 perspective.</p> <p>15 As the corporate designee of</p> <p>16 Sherwin-Williams designated to testify regarding</p> <p>17 the destruction of any documents relating to</p> <p>18 Sherwin-Williams' operations at the Newark plant,</p> <p>19 do the documents referred to in Sherwin-Williams'</p> <p>20 response to Request Number 12, were those</p> <p>21 documents destroyed?</p> <p>22 A. I don't know.</p> <p>23 Q. In preparation for this deposition, did</p> <p>24 you do anything to ascertain whether the</p> <p>25 documents identified in response to Request</p>

<p style="text-align: right;">Page 198</p> <p>1 Number 12 were destroyed?</p> <p>2 A. We -- I was informed of how we</p> <p>3 maintained documents, how we would respond to</p> <p>4 these types of questions or requests, what we</p> <p>5 would do to try to identify and procure and</p> <p>6 provide this information.</p> <p>7 That's basically what I've learned</p> <p>8 during the deposition prep.</p> <p>9 Q. In the course of reviewing documents in</p> <p>10 preparation for this deposition, did you see any</p> <p>11 indication that pentachlorophenol was used as a</p> <p>12 raw material in Sherwin-Williams' operations at</p> <p>13 the Newark plant?</p> <p>14 A. Sorry. I'm getting some chemicals</p> <p>15 confused. I know there was a listing of</p> <p>16 above-ground storage tanks with a listing of</p> <p>17 materials.</p> <p>18 Yeah, I'd be speculating. I don't</p> <p>19 remember exactly what the materials were, if it</p> <p>20 was chlorobenzene or that material you just</p> <p>21 described.</p> <p>22 Q. If you could find in your pile of</p> <p>23 exhibits there Exhibit 27, which is a 1961 to</p> <p>24 1962 Material Consumption Report.</p> <p>25 You found it?</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. And in Sherwin-Williams' response to</p> <p>2 EPA's 104E request that we marked as Exhibit 3,</p> <p>3 it states that raw materials containing</p> <p>4 pentachlorophenol may have been present at the</p> <p>5 facility; is that correct?</p> <p>6 A. May have been present in raw materials</p> <p>7 prior to 1994.</p> <p>8 Q. And except for that reference, there is</p> <p>9 no other reference to pentachlorophenol</p> <p>10 throughout Sherwin-Williams' response to EPA's</p> <p>11 104E request?</p> <p>12 A. 4 through 16 does not appear to</p> <p>13 reference pentachlorophenol.</p> <p>14 Q. And with respect to copper, in the</p> <p>15 records that you've reviewed in preparation for</p> <p>16 this deposition, have you reviewed information</p> <p>17 indicating that copper was present in raw</p> <p>18 materials consumed at the Newark plant?</p> <p>19 A. I believe some of the materials</p> <p>20 indicated a copper compound was a pigment.</p> <p>21 Q. If I could just refer you back to</p> <p>22 Exhibit 27, which is the one we just had out, and</p> <p>23 specifically to page 95933.</p> <p>24 And am I correct the second-to-last</p> <p>25 entry on this page indicates that red copper</p>
<p style="text-align: right;">Page 199</p> <p>1 If I could refer you to the page that</p> <p>2 ends with Bates number -- the page whose Bates</p> <p>3 number ends with 95773.</p> <p>4 MR. MCGAHREN: Can you say the Bates</p> <p>5 number again.</p> <p>6 MR. MCDERMOTT: Sure. 95773.</p> <p>7 Q. You found that page?</p> <p>8 A. Yes.</p> <p>9 Q. In the middle of the page, am I correct</p> <p>10 that there's an entry on this Raw Material</p> <p>11 Consumption Report that indicates a raw material</p> <p>12 called pentachlorophenol was consumed at the</p> <p>13 Newark plant in a quantity of 3,950 pounds during</p> <p>14 the time period covered by this Raw Material</p> <p>15 Consumption Report?</p> <p>16 A. Yes. That's what the report indicates.</p> <p>17 Q. And Exhibit 2, the 104E request</p> <p>18 specifically asked in Request Number 3 regarding</p> <p>19 the use or presence of -- well, let me reframe</p> <p>20 that.</p> <p>21 Request number 3 of the 104E request</p> <p>22 that we've marked as Exhibit 2 specifically asks</p> <p>23 for information about pentachlorophenol; is that</p> <p>24 correct?</p> <p>25 A. It is listed in question 3.</p>	<p style="text-align: right;">Page 201</p> <p>1 oxide was consumed as a raw material at the</p> <p>2 Newark plant in the quantity of 13,632 pounds</p> <p>3 during 1961 to 1962?</p> <p>4 A. Yes.</p> <p>5 Q. And, with respect to copper,</p> <p>6 Sherwin-Williams' response to the EPA's 104E</p> <p>7 request indicates that copper may have been</p> <p>8 present in all products used at the facility</p> <p>9 prior to 1984; is that correct?</p> <p>10 A. Can you say that one more time, please.</p> <p>11 Q. Sure.</p> <p>12 With respect to copper,</p> <p>13 Sherwin-Williams' response to EPA's 104E request</p> <p>14 stated that copper may have been present in raw</p> <p>15 products used at the facility prior to 1984; is</p> <p>16 that correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And I'm also correct that copper was not</p> <p>19 referenced anywhere else in Sherwin-Williams'</p> <p>20 response to EPA's 104E request?</p> <p>21 A. Yeah. I don't see it listed in the</p> <p>22 responses through 16.</p> <p>23 Q. And with respect to mercury, am I</p> <p>24 correct that Sherwin-Williams' response to EPA's</p> <p>25 104E request indicates that mercury may have been</p>

Page 202	Page 204
<p>1 present in raw products used at the facility</p> <p>2 prior to 1984?</p> <p>3 A. Yes, that's correct.</p> <p>4 Q. And I'm also correct that mercury is not</p> <p>5 referenced anywhere else in EPA's response -- or</p> <p>6 Sherwin-Williams' response to EPA's 104E request</p> <p>7 except for that reference in response to Request</p> <p>8 3?</p> <p>9 A. That is correct.</p> <p>10 Q. One -- do you recall you testified</p> <p>11 before regarding your efforts to prepare for the</p> <p>12 deposition here today? Do you recall that</p> <p>13 testimony?</p> <p>14 A. What specifically?</p> <p>15 Q. Just in general on that subject.</p> <p>16 A. Yes.</p> <p>17 Q. How many hours would you estimate that</p> <p>18 you spent, in total, preparing for this</p> <p>19 deposition?</p> <p>20 A. Twenty hours, plus or minus a few.</p> <p>21 Q. And I think you mentioned earlier that</p> <p>22 you began preparing for the deposition about six</p> <p>23 weeks ago, plus or minus a couple weeks?</p> <p>24 A. Yes.</p> <p>25 Q. Roughly, how many of those hours would</p>	<p>1 VIDEOGRAPHER: Off the record, 4:49.</p> <p>2 (A recess was taken.)</p> <p>3 VIDEOGRAPHER: On the record, 4:51.</p> <p>4 BY MR. MCDERMOTT:</p> <p>5 Q. I'm going to mark as Exhibit 38 this</p> <p>6 document dated October 16th, 1987. It has a</p> <p>7 Bates number on the first page ending in 114618.</p> <p>8 (S-W Exhibit 38, 10-16-1987 letter to</p> <p>9 Louis Galante, Bates-labeled</p> <p>10 TSWC-FED-00114618 - 4628, was marked for</p> <p>11 purposes of identification.)</p> <p>12 MR. MCGAHREN: Thank you.</p> <p>13 Q. If you could take a look at this</p> <p>14 document, sir, and let me know if you've seen it</p> <p>15 before.</p> <p>16 A. I may have. I don't -- I don't recall.</p> <p>17 Q. If I could direct your attention to the</p> <p>18 page with the Bates number ending</p> <p>19 TSWC-FED-00114628. I'm sorry. 114628.</p> <p>20 And am I correct that this is a</p> <p>21 Community Right to Know Environmental Survey</p> <p>22 filled out with respect to the Newark plant?</p> <p>23 A. That's what the header reads.</p> <p>24 Q. And the page prior to that, would you</p> <p>25 agree it's the -- it appears to be the same</p>
Page 203	Page 205
<p>1 you estimate you spent preparing in the last week</p> <p>2 or two versus the preceding weeks?</p> <p>3 A. Maybe a third of the total time was in</p> <p>4 the last week or two.</p> <p>5 Q. You're currently employed by</p> <p>6 Sherwin-Williams; is that right?</p> <p>7 A. Correct.</p> <p>8 Q. You've been with the company since 2015?</p> <p>9 A. That's correct.</p> <p>10 Q. What's your current position?</p> <p>11 A. The senior director for EHS remediation.</p> <p>12 Q. And how long have you held that</p> <p>13 position?</p> <p>14 A. I started as -- with health and safety</p> <p>15 responsibilities in 2015, and I've had additional</p> <p>16 responsibilities to the role I'm at now.</p> <p>17 Q. Are you based in Cleveland?</p> <p>18 A. Yes.</p> <p>19 Q. Except for being designated to testify</p> <p>20 as the corporate designee for Sherwin-Williams in</p> <p>21 this deposition, have you had any involvement in</p> <p>22 any way in the Diamond Alkali Superfund site?</p> <p>23 A. No.</p> <p>24 MR. MCDERMOTT: Why don't we go off the</p> <p>25 record.</p>	<p>1 information in typed instead of handwritten form?</p> <p>2 A. Yes.</p> <p>3 Q. And the page that ends in 114627 with</p> <p>4 the typed information, is it correct that, in</p> <p>5 response to the Questionnaires section that</p> <p>6 states: Does this facility use, store or produce</p> <p>7 any quantity of any substance listed on the</p> <p>8 attached environmental hazardous substances list,</p> <p>9 the box indicating "yes" is checked?</p> <p>10 A. That's correct.</p> <p>11 Q. And on the list of hazardous substances,</p> <p>12 under Environmental Hazardous Substance Name,</p> <p>13 there are three entries all indicating lead.</p> <p>14 Do you see those entries, sir?</p> <p>15 A. Yes.</p> <p>16 Q. And under that section, there are also</p> <p>17 two entries indicating copper.</p> <p>18 Do you see those?</p> <p>19 A. I do.</p> <p>20 Q. And if you look below at the</p> <p>21 certification, it indicates the date as</p> <p>22 April 1st, 1986.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. As the corporate designee of</p>

<p style="text-align: right;">Page 206</p> <p>1 Sherwin-Williams, is it correct that this</p> <p>2 document indicates that lead and copper were</p> <p>3 being used, stored or produced at the Newark</p> <p>4 plant after 1984?</p> <p>5 A. This indicates that there was an</p> <p>6 inventory on-site during that year.</p> <p>7 Q. And, as the corporate designee of</p> <p>8 Sherwin-Williams, does that indicate that</p> <p>9 Mr. McConnell's response to Sherwin -- to EPA's</p> <p>10 Request For Information Number 5, that</p> <p>11 Sherwin-Williams has not collected, stored,</p> <p>12 treated or disposed of any hazardous substances</p> <p>13 since 1984 at this facility is not correct?</p> <p>14 MR. MCGAHREN: Objection to the form.</p> <p>15 A. No, I wouldn't conclude that.</p> <p>16 Q. Why not?</p> <p>17 A. I don't know what information</p> <p>18 Mr. McConnell had to respond to that question.</p> <p>19 So I don't know that he had knowledge of this</p> <p>20 document. I'm not sure what he based his answer</p> <p>21 on. So I wouldn't conclude that he was</p> <p>22 incorrect.</p> <p>23 Q. As the corporate designee for</p> <p>24 Sherwin-Williams, you would agree that unless</p> <p>25 Mr. McConnell had some indication that the</p>	<p style="text-align: right;">Page 208</p> <p>1 5; is that a fair statement?</p> <p>2 A. It indicates there was an inventory of</p> <p>3 these materials on-site.</p> <p>4 Q. Okay.</p> <p>5 A. Which is different than what the</p> <p>6 response was.</p> <p>7 Q. Just a couple more.</p> <p>8 I'm going to mark as Exhibit 39 a</p> <p>9 document dated July 7, 1998. And it has Bates</p> <p>10 number SW, five leading zeros, 24.</p> <p>11 MR. MCGAHREN: This document bears a</p> <p>12 privileged and confidential header at the top.</p> <p>13 It appears to have been inadvertently produced.</p> <p>14 Can I take a moment off the record to</p> <p>15 look at this document?</p> <p>16 MR. MCDERMOTT: Sure.</p> <p>17 VIDEOGRAPHER: Off the record, 4:59.</p> <p>18 (A recess was taken.)</p> <p>19 VIDEOGRAPHER: On the record, 5:03.</p> <p>20 MR. MCGAHREN: I just -- you just</p> <p>21 presented us with a document that you marked for</p> <p>22 identification as Exhibit 39 which is clearly</p> <p>23 marked and designated as privileged and</p> <p>24 confidential, prepared at the request of counsel.</p> <p>25 I haven't seen this personally before.</p>
<p style="text-align: right;">Page 207</p> <p>1 information in Exhibit 38 was not correct, then</p> <p>2 his answer was inaccurate in 1995?</p> <p>3 MR. MCGAHREN: Objection to the form of</p> <p>4 the question. Asked and answered.</p> <p>5 A. I'm sorry. Can you ask that one more</p> <p>6 time. I was looking at a different document</p> <p>7 number.</p> <p>8 Q. Sure.</p> <p>9 Unless Mr. McConnell in 1995 had</p> <p>10 information indicating that Exhibit 38 was not</p> <p>11 accurate, then his response to EPA's Request</p> <p>12 Number 5 would not be accurate; is that right?</p> <p>13 MR. MCGAHREN: Same objection. You're</p> <p>14 asking him a hypothetical, as well.</p> <p>15 Q. You can answer.</p> <p>16 MR. MCGAHREN: It's not appropriate for</p> <p>17 a fact witness.</p> <p>18 A. I heard a double negative in that</p> <p>19 question, I think.</p> <p>20 Q. You want me to try it a different way?</p> <p>21 A. Please.</p> <p>22 Q. The information reflected in Exhibit 38</p> <p>23 regarding lead and copper at the Newark plant on</p> <p>24 its face is not consistent with Mr. McConnell's</p> <p>25 response to EPA's Request For Information Number</p>	<p style="text-align: right;">Page 209</p> <p>1 I don't know the circumstances behind this</p> <p>2 document, and I'm not prepared to let you examine</p> <p>3 the witness with this document at this time.</p> <p>4 MR. MCDERMOTT: If you want to claw the</p> <p>5 document back right now, that's certainly within</p> <p>6 your right under the protocol, and we'll move on</p> <p>7 to the next document.</p> <p>8 MR. MCGAHREN: Okay.</p> <p>9 MR. MCDERMOTT: Obviously, you know, I'm</p> <p>10 saying that without any waiver of any position to</p> <p>11 challenge that clawback.</p> <p>12 MR. MCGAHREN: Okay. When did you</p> <p>13 become aware of this document?</p> <p>14 MR. MCDERMOTT: That document was</p> <p>15 produced with Sherwin-Williams' production.</p> <p>16 MR. MCGAHREN: When did you become aware</p> <p>17 of it?</p> <p>18 MR. MCDERMOTT: At some point between</p> <p>19 now -- between the time it was produced and now.</p> <p>20 MR. MCGAHREN: Okay.</p> <p>21 MR. MCDERMOTT: I would also indicate</p> <p>22 that the privileged and confidential stamp, one,</p> <p>23 the subject matter of the document is clearly not</p> <p>24 privileged under any of the case law interpreting</p> <p>25 this kind of work being done by employees.</p>

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1 Second, the privileged and confidential
2 stamp on the document itself is -- was marked
3 because of Mr. McConnell's instruction that all
4 documents must be clearly marked privileged and
5 confidential, prepared at the request of counsel
6 which, again, the case law very clearly indicates
7 is not a permissible basis to claim a document to
8 be privileged.
9 MR. MCGAHREN: Well, this is the first
10 document we've seen today that's marked
11 privileged and confidential, so all documents
12 clearly weren't marked that way, but we need to
13 investigate this document.
14 MR. MCDERMOTT: You can investigate as
15 much as you need to.
16 BY MR. MCDERMOTT:
17 Q. Mr. Vosicky, in your review of materials
18 relating to this deposition, did you see anything
19 indicating that Donald McConnell was involved
20 throughout the '90s in assembling materials
21 relating to the Newark plant?
22 MR. MCGAHREN: I'm going to object to
23 the form of the question. And I think you're
24 seeking attorney-client-privileged information.
25 MR. MCDERMOTT: The fact of his

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1 involvement can't be privileged.
2 MR. MCGAHREN: It could be.
3 MR. MCDERMOTT: I can't think of a
4 circumstance that it would be.
5 MR. MCGAHREN: It's a very open-ended
6 question. I think it could easily include
7 privileged information. Don McConnell, as you're
8 aware, is a lawyer.
9 BY MR. MCDERMOTT:
10 Q. Mr. Vosicky, I don't recall if we've
11 covered this, but in preparing for this
12 deposition, did you meet with or communicate at
13 any time with Mr. McConnell?
14 A. No.
15 Q. And are you aware of anybody on your
16 behalf, in preparing for this deposition,
17 communicating on any subject with Mr. McConnell?
18 A. No.
19 MR. MCDERMOTT: I think those are all
20 the questions I have.
21 MR. MCGAHREN: Okay.
22 VIDEOGRAPHER: Anyone else? We're off?
23 MR. MCGAHREN: We're done.
24 VIDEOGRAPHER: Off the record, 5:07.
25 (Signature is not waived.)

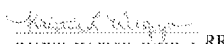
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1 (Deposition concluded at 5:07 p.m.)
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1 CERTIFICATE
2
3 The State of Ohio,)
4) SS:
5 County of Cuyahoga.)
6
7 I, Kristin Wegryn, a Notary Public
8 within and for the State of Ohio, duly
9 commissioned and qualified, do hereby certify
10 that the within-named witness, JOHN VOSICKY, was
11 by me first duly sworn to testify the truth, the
12 whole truth, and nothing but the truth in the
13 cause aforesaid; that the testimony then given by
14 the above-referenced witness was by me reduced to
15 stenotypy in the presence of said witness;
16 afterwards transcribed, and that the foregoing is
17 a true and correct transcription of the testimony
18 so given by the above-referenced witness.
19
20 I do further certify that this
21 deposition was taken remotely at the time and
22 place in the foregoing caption specified and was
23 completed without adjournment. I do further
24 certify that I am not a relative, counsel, or
25 attorney for either party, or otherwise
interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my seal of office at
Cleveland, Ohio, on this 28th day of September
2022.


Kristin Wegryn, Notary, ORR
Notary Public State of Ohio
Commission expiration: July 23, 2023

<p style="text-align: right;">Page 214</p> <p>1 John McGahren, Esq. 2 john.mcgahren@morganlewis.com 3 September 28, 2022. 4 RE: Occidental Chemical Corporation v. 21St Century Fox America 5 9/27/2022, John Vosicky (#5496867) 6 The above-referenced transcript is available for 7 review. 8 Within the applicable timeframe, the witness should 9 read the testimony to verify its accuracy. If there are 10 any changes, the witness should note those with the 11 reason, on the attached Errata Sheet. 12 The witness should sign the Acknowledgment of 13 Deponent and Errata and return to the deposing attorney. 14 Copies should be sent to all counsel, and to Veritext at 15 cs-ny@veritext.com. 16 17 Return completed errata within 30 days from 18 receipt of testimony. 19 If the witness fails to do so within the time 20 allotted, the transcript may be used as if signed. 21 22 Yours, 23 Veritext Legal Solutions 24 25</p>	<p style="text-align: right;">Page 216</p> <p>1 Occidental Chemical Corporation v. 21St Century Fox America 2 John Vosicky (#5496867) 3 ACKNOWLEDGEMENT OF DEPONENT 4 I, John Vosicky, do hereby declare that I 5 have read the foregoing transcript, I have made any 6 corrections, additions, or changes I deemed necessary as 7 noted above to be appended hereto, and that the same is 8 a true, correct and complete transcript of the testimony 9 given by me. 10 11 _____ 12 John Vosicky Date 13 *If notary is required 14 SUBSCRIBED AND SWORN TO BEFORE ME THIS 15 _____ DAY OF _____, 20____. 16 17 18 _____ 19 NOTARY PUBLIC 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 215</p> <p>1 Occidental Chemical Corporation v. 21St Century Fox America 2 John Vosicky (#5496867) 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE_____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE_____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE_____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE_____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE_____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE_____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 John Vosicky Date 25</p>	

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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